United States Court of Appeals for the Second Circuit



APPENDIX

74-1793

IN THE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

RACHEL EVANS, et al.,

Appellants,

-v-

JAMES T. LYNN, et al.,

Appellees.

B P/s



APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

RICHARD F. BELLMAN LOIS D. THOMPSON J. CHRISTOPHER JENSEN Suburban Action Institute 57 Tuckahoe Road Yonkers, New York 10710

914-423-6701

PAGINATION AS IN ORIGINAL COPY

Index	to	App	endix

	Page			
Complaint	la			
Federal Defendants' Motion to Dismiss	17a			
Davis Affidavit	18a			
Plaintiffs' Motion for Preliminary Injunction				
Davidoff Affidavit	20a			
Glickstein Afficavit	31a			
Tri-State Motion to Dismiss	39a			
Feldman Affidavit	4la			
New Castle Motion to Dismiss	43a			
Burns Affidavit	44a			
Handler Affidavit	63a			
Exhibits	70a			
Stipulation of April 5, 1974	84a			
Affidavit of Plaintiff Fernell Patterson in opposition to Motions to Dismiss for lack of standing	87a			
Opinion and Order of District Court	90a			
Selected Portions of Pre-Trial Depositions1	10a			
Selected Exhibits2	19a			

勒

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

RACHEL EVANS, STEVEN R. Klod, FERNELL PATTERSON, and WALTER B. BROOKS, JR., on behalf of themselves and all others similarly situated,

CIVIL NO.

Plaintiffs,

COMPLAINT CLASS ACTION

-against-

JAMES T. LYNN in his capacity as Secretary of the Department of Housing and Urban Development; JOSEPH D. MONTICCIOLO in his capacity as Acting Area Director of the New York Office of the Department of Housing and Urban Development; S. WILLIAM GREEN, in his capacity as Regional Administrator of the Department of Housing and Urban Development; THE DEPARTMENT OF HOUSING AND URBAN DEVELOP-MENT; DOUGLAS CARROLL, in his capacity as Director of Tri-State Regional Planning Commission; THE TRI-STATE REGIONAL PLANNING COMMISSION; ROGERS C.B. MORTON, in his capacity as Secretary of the Department of the Interior; JAMES G. WATT, in his capacity as Director of the Bureau of Outdoor Recreation of the Department of the Interior; and THE DEPARTMENT OF THE INTERIOR,

Defendants.

1. This is a class action brought by low income minority residents of Westchester County who challenge the legality of two separate Federal grants in aid to the Town of New Castle ("New Castle"), Westchester County, State of New York, on the ground that New Castle denies minority citizens Federal benefits by using its zoning regulations and land use practices to exclude placks and other minorities and persons of low and

moderate in come from its borders. One of the grants is from the Department of Housing and Urban Development ("HUD") for the construction of a sewer system. The second grant is from the Department of the Interior ("Interior") for the development of a recreation area and park. It is also alleged that granting of this aid violates Federal civil rights policies set forth primarily in the Fair Housing Act of 1968, Title VI of The Civil Rights Act of 1964, Executive Order 11063, and the United States Constitution. It is further alleged that Tri-State Regional Planning Commission ("Tri-State") abdicated its responsibility to review the New Castle applications for HUD and Interior funds, which duty is prescribed by Federal law and directives of the United States Office of Management and Budget. This failure renders Federal approval of the HUD and Interior grants illegal. The plaintiffs seek an order enjoining the agencies involved from dispersing any funds to New Castle pursuant to the two programs referred to.

JURISDICTION

Jurisdiction is invoked under 5 U.S.C. 701-706;
 U.S. 1331, 1343(3) and (4), 1361, 2201, 2202; 42 U.S.C. 1981,
 1982, 1983, 1985, 2000(d), 3601 and 4231; and the Fifth Amendment to the United States Constitution.

PLAINTIFFS

3. Rachel Evans is a black resident of the Town of Peekskill in Westchester County, New York. She resides at 1123 Howard Street, Peekskill. Plaintiff Evans lives with her five children in a six and one-half room apartment in a deteriorated

building for which she pays \$100.00 per month in rent. Plaintiff Evans' apartment is located in the urban renewal section of Peekskill and is slated for demolition in the near future. She obtained this apartment after having to abandon her previous apartment, which also was in the urban renewal area and has since been demolished. Plaintiff Evans is not able to find decent housing in Peekskill or the surrounding areas in Westchester County that she can afford. Her low income is exclusively derived from public assistance.

- 4. Steven R. Kidd is a black resident of the City of Yonkers in Westchester County, New York. He resides at 73-83 Highland Avenue, Yonkers, New York. Plaintiff Kidd is married and lives in a four-room apartment with his wife and two-year-old daughter. The dwelling has serious plumbing and structural defects. Mr. Kidd pays \$168.75 a month in rent. Plaintiff Kidd is a full-time student during the academic year; he is employed by the Urban Corps for the summer. Plaintiff Kidd's family is of moderate income. Plaintiff Kidd has resided at his present address for eleven months; he moved there from other dilapidated housing in Yonkers. Plaintiff Kidd and his family desire the opportunity to live in New Castle, New York in order to enjoy the open space and parks located there; however, they are unable to .
- 5. Fernell Patterson is a black resident of the City of White Plains in Westchester County, New York. Plaintiff Patterson is married and lives in a two bedroom house in White Plains with his wife and his two small children, aged four years and six months. Plaintiff Patterson pays \$167.50 for rent and utilities

every month. Plaintiff Patterson is a full time science teacher employed by the Yonkers Board of Education. He has been employed in this capacity for three years and receives a moderate income. Plaintiff Patterson has resided at his present address for five years but now with his larger family wishes to live in housing with more space and decent surroundings. Mr. Patterson and his family desire the opportunity to move to New Castle in order to enjoy the open space, parks and pleasant living environment of the Town; however, they are unable to do so because of the Town's discriminatory land use practices.

6. Walter B. Brooks Jr., is a black resident of the Town of Ossining in Westchester County, New York. He resides with his wife and two children, ages seven and eight, at 43 State Street, Ossining, New York. Plaintiff Brooks and his family live in a five-room apartment that is severely dilapidated and vermininfested. Mr. Brooks pays \$225.00 a month in rent and approximately \$30.00 a month in utility charges. Mr. Brooks is self-employed as a barber at 132 Main Street in Ossining. His spouse is employed as a teacher's aid with the Ossining Children's Center, also in Ossining. The Brooks family is of moderate income. Plaintiff Brooks and his family have resided at their current address for one year and desire to relocate to safe and sanitary housing that they can afford in Westchester County.

DEFENDANTS

7. James T. Lynn is the Secretary of HUD. He has overall responsibility for supervision and control of HUD's programs and activities including grants in aid to local communities.

- 8. S. William Green is Regional Administrator for Region II, HUD. He has overall responsibility and supervision for HUD programs in Region II which includes all Westchester County.
- 9. Joseph Monticciolo is Acting Area Director of the New York Office of the Department of Housing and Urban Development. He is charged with reviewing and approving applications for grants for water and sewer projects in the New York area, including Westchester County.
- 10. The Department of Housing and Urban Development is an agency of the United States Government which, pursuant to its authority under federal law, has undertaken to aid the Town of New Castle in the construction of a sewer system.
- 11. Rogers C. B. Morton is Secretary of the Department of Interior. He has overall responsibility and control of the Department of Interior's programs and activities, including all grants in aid through his Department to local communities.
- 12. James G. Watt is Director of The Bureau of Outdoor Recreation, Department of Interior. He has overall responsibility with respect to grants in aid in the area of recreation and open space.
- 13. The Department of the Interior is an agency of the United States Government which, purusant to its authority under federal law, has undertaken to aid the Town of New Castle in the acquisition of 33 acres of park lands.

- 14. Tri-State Regional Planning Commission is a public agency with planning responsibilities in New York, Connecticut and New Jersey. Among its other responsibilities, Tri-State is charged with the duty of reviewing all applications for Federal funding in the three states over which it has jurisdiction.
- 15. Douglass Carroll is Director of Tri-State. He has overall responsibility for its activities and programs including review of grant applications pursuant to the A-95 Circular.

CLASS ACTION ALLEGATIONS

- bring this as a class action pursuant to 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on their own behalf and on behalf of all those similarly situated. The class represented is all black and Spanish-speaking persons and all persons of low and moderate income who reside in Westchester County and who are denied the opportunity to share in Federal benefits extended to the Town of New Castle as a result of the zoning, housing and land use practices engaged in by the Town.
- number of the members in said class is in the thousands and the class is therefore so numerous that joinder of all members is impracticable; (2) there are questions of law and fact common to the class, said common questions being whether the determination by HUD and the Interior to provide Federal grants in aid to the. Town of New Castle and the determination by Tri-State which made these grants possible, notwithstanding the exclusionary housing

and zoning practices engaged in by the Town of New Castle, violate certain Federal civil rights and housing laws, policies and practices as more fully set forth below; (3) the claims of the plaintiffs are typical of the claims of the class; (4) the plaintiffs will fairly and adequately protect the interests of the class as they seek no individual benefit from this action but only a class benefit; (5) the defendants have acted or failed to act on grounds applicable generally to the class, thus making final relief appropriate with respect to the class as a whole; and (6) questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for a fair and efficient adjudication of this suit.

18. With respect to Rule 23(b)(3), plaintiffs aver that the members of the class have no interest in individually controlling prosecution of separate actions relevant to the controversy involved herein; that there is no other litigation already commenced concerning the controversy involved here; that it is desirable to concentrate litigation of the claims in this matter in this forum in order to insure a quick resolution of this matter, thereby assuring federal compliance with the housing and civil rights policies more fully described below; and that there are no foreseeable difficulties likely to be encountered in the management of a class action.

FACTS

The rederal Grants Involved

19. In 1969 the Town of New Castle determined to install

a sanitary sewer system in a section of the Town known as Chappaqua. Shortly thereafter it created the King-Greeley sewer district. By resolution dated March 29, 1972 the Town Board of New Castle determined to make application to HUD for Federal financing of the King-Greeley sewer district. Shortly thereafter the Town made its initial application to HUD for Federal financing. 20. All required data for the application for funding was submitted to the New York Area office of HUD by the Town in January 7, 1972. The Town requested a Federal grant in the amount. \$750,000 or the equivalent of one half the estimated cost of the sewer facility. 21. HUD was specifically notified that black and Spanish-speaking persons and all other persons of low income would be denied the opportunity to benefit from Federal funding of the King-Greeley sewer project by virtue of the fact that New Castle through its housing and zoning laws prevents the development of low and moderate income housing. Despite that fact, HUD determined to fund the King-Greeley sewer project and made an initial determination to grant the sum of \$358,000 to New Castle for the project.

- 22. In 1972, the Town of New Castle made a determination to develop 33 acres of land in the Town known as Turner Swamp as a public park and recreation area. The Town made formal application to the Bureau of Outdoor Recreation of the Department of the Interior for funding for acquisition of those 33 acres.
- 23. Despite the fact that the Bureau of Outdoor
 Recreation was notified that by virtue of the housing and land use

policies of the Town of New Castle, black and Spanish-speaking and other minority citizens and all persons of low and moderate income would be denied an opportunity to enjoy the park and recreation facilities to be created, the Bureau of Outdoor Recreation awarded the sum of \$104,000 to New Castle for the purpose of acquiring the land.

- 24. The award of Federal funds for parks and sewer purposes to alcoholity residential community such as New Castle while low-income and minority persons, who are forced to live in areas of high population density, lack adequate park and recreational facilities and access to decent housing encourages exclusionary communities such as New Castle to engage in discriminatory land use practices.
- 25. On information and belief the aforementioned Federal grants represent part of a pattern and practice by HUD and Interior of awarding grants in aid to exclusionary communities.

Tri-State Involvement

- 26. The New Castle application for funding for the King-Greeley Sewer District was forwarded to the Tri-State Commission for comment. By letter dated August 4, 1971 to the Commissioner of the Westchester County Department of Planning, Tri-State found that the proposed sewer project was "of non-regional significance". Tri-State therefore failed to review the application. HUD subsequently approved the requested grant in aid.
- 27. Similarly Tri-State failed to review the New Castle application for funding to Interior. Interior subsequently approved the requested grant in aid.

The Nature of New Castle

- 28. New Castle is located in the central portion of Westchester County, about 20 miles from the Southern Westchester cities of Mt. Vernon, New Rochelle, White Plains and Yonkers and only about 35 miles from New York City. The Town has experienced significant population growth during the last twenty years. However, that population growth has been restricted to those who are white and of middle or upper income. During the last two decades New Castle's white population has increased at the rate of approximately 5,000 persons per decade; the non-white population increased by only 50 persons during the decade 1950-1960, and 90 persons during the decade 1960-1970. Total non-white population has remained approximately one percent of the entire population of the Town from 1950 through the present. The racial composition of New Castle's population is in marked contrast to that of the southern Westchester cities. While Westchester's total non-white population increased by 28,897 persons from 1960 to 1970, 21,000 of those persons, or 72%, moved into the cities of Mt. Vernon, New Rochelle, White Plains and Yonkers. Most significantly, Mt. Vernon's non-white population grew by 11,000 in the last decade, changing from a city which was 19.9% non-white in 1960 to one which was 36.3 percent non-white in 1970.
- 29. New Castle's population is also disproportionately wealthy. While the median family income of families in New York State was 8,510 in 1970, and that of families in Westchester was \$13,704, New Castle's median family income was \$22,005.
- 30. It is no accident that New Castle has a disproportionately wealthy population. Under the

Town's zoning ordinance and land use and housing practices and policies, only the most wealthy can afford to live in New Castle.

- 31. Almost 90% of New Castle, or some 12,900 acres, is zoned for single-family residential development on parcels of no less than one or two acres. Two family houses, garden apartments and all other forms of multi-family housing are prohibited. The Town's zoning ordinance, in effect, mandates that only the most expensive form of housing be constructed in New Castle.
- 32. The 1970 Census revealed that the median value of single-family houses in New Castle was above \$50,000, the highest census category. The 1970 Census further revealed that very little housing in the Town is valued at less than \$25,000. As a result, a disproportionate percentage of black and Spanish-speaking people, and other people on sof low income are excluded from housing opportunities in the area and the segregated nature of the Town is perpetuated.
- 33. New Castle has absolutely no intention of changing its exclusionary land use practices despite the fact that with approximately 7000 acres of land presently vacant and suitable for development, the Town could make a significant contribution toward meeting the region's housing needs and providing a decent living environment for some of those now locked into the area's slum ghettos.
- 34. The extent of New Castle's opposition to the construction of low income housing for minority groups in the Town is illustrated by the Town's response to a proposal by New York State Urban Development Corporation (hereinafter UDC) that 100 units of

low or moderate income housing be constructed in the Town. New Castle officials vigorously opposed the UDC proposal and vowed to resist the proposal through every available means.

35. With Federal funds to construct a sanitary sewer system it would be possible for New Castle to provide public facilities to support low and moderate income multi-family housing. However, the Town's Master Plan specifically states "the provision or extension of water and sewers in a low residential area shall not ... be considered as a basis for rezoning to higher residential density." Thus, New Castle desires Federal money for community improvement but refuses to make the community accessible to those who are presently excluded from the Town and thereby denied Federal benefits.

FIRST CAUSE OF ACTION

36. Plaintiffs reallege paragraphs 1 through 35.

Defendant HUD, in approving Federal funding of the King-Greeley sewer district has failed in its duty to affirmatively promote fair and suitable housing irrespective of race, color, creed, or national origin purusant to 42 U.S.C. 3608 (d)(5).

SECOND CAUSE OF ACTION

37. Plaintiffs reallege paragraphs 1 through 35.

Defendant HUD, in approving Federal funding of the King Greeley sewer project has violated 42 U.S.C. 2000 (d), and 42 U.S.C. 1981, 1982 and 1985; Executive Order 11063; and the Fifth Amendment to the Constitution of the United States, because its grants in aid assist and encourage New Castle in its practice of racial

discrimination and have the effect of denying members of the plaintiff class their right to participate in the receipt of Federal benefits.

THIRD CAUSE OF ACTION

38. Plaintiffs reallege paragraphs 1 through 35.

Defendant HUD, in approving Federal funding of the King-Greeley sewer project in the face of Tri-State's failure to review the application has violated 42 U.S.C. 3334.

FOURTH CAUSE OF ACTION

39. Plaintiffs reallege paragraphs 1 through 35.

Defendant Department of the Interior, in approving a Federal grant in aid for the purchase and development of the Turner Swamp Public Recreational Facility, has violated 42 U.S.C. 2000(d), 42 U.S.C. 1981, 1982 and 1985, and the Fifth Amendment to the Constitution of the United States in that the grant has been made to a municipality which discriminates against members of the plaintiff class and thereby denys them access to the Federally bestowed benefits available to users of the park.

FIFTH CAUSE OF ACTION

40. Plaintiffs reallege paragraphs 1 through 35.

Defendant Interior, in approving a Federal grant in aid for the purchase and development of the Turner Swamp Public Recreational Facility in the face of Tri-State's failure to review the application has violated 42 U.S.C. 3334.

SIXTH CAUSE OF ACTION

41. Plaintiffs reallege paragraphs 1 through 35.

Defendant Tri-State has failed to properly review the applications for Federal funding of the Town of New Castle as required both by the Office of Management and Budget Circular A-95 and 42 U.S.C.

3334. In failing to properly review these grant applications

Tri-State has also violated 42 U.S.C. 2000(d).

PRAYER FOR RELIEF

WHEREFORE, plaintiffs demand that this Court:

- A. Assign this case for hearing at the earliest possible date and cause the case to be expedited in every way;
- B. Declare that the actions of the HUD defendants in approving Federal funding for sewers in New Castle while New Castle continues to engage in exclusionary land use practices violates the plaintiffs' rights, privileges and immunities under:
- The Fifth Amendment to the Constitution of the United States;
 - 2. 42 U.S.C. \$ 3608(d) (5);
 - 3. 42 U.S.C. \$ 2000(d);
 - 4. 42 U.S.C. §§ 1981, 1982 and 1985;
 - 5. 42 U.S.C. § 3334.
 - 6. Executive Order 11063
- C. Preliminarily and permanently enjoin the NUD defendants from disbursing or transferring Federal fur to New Castle for the construction of the King-Greeley sewer district

unless and until New Castle ceases from engaging in land use practices which exclude minority and low-income people from its boundaries.

- D. Preliminarily and permanently enjoin the HUD defendants from disbursing or transferring Federal funds to New Castle for the construction of the King-Greeley sewer district unless and until Tri-State reviews and approves the grant application.
- E. Declare that the actions of the Department of
 Interior defendants in approving a Federal grant to New Castle for
 the purchase and development of the Turner Swamp Public Recreational Facility while New Castle has continued to engage in
 exclusionary land use practices violates plaintiffs' rights,
 privileges and immunities under:
- The Fifth Amendment to the Constitution of the United States;
 - 2. 42 U.S.C. \$ 3608(c);
 - 3. 42 U.S.C. § 2000(d);
 - 4. 42 U.S.C. \$\$ 1981, 1982 and 1985;
 - 5. 42 U.S.C. § 3334;
 - 6. Executive Order 11063.
- F. Preliminarily and permanently enjoin the Department of Interior defendants from disbursing or transferring any Federal funds for the purchase or development by New Castle of the Turner Swamp Public Recreational Facility so long as New Castle continues to engage in land use practices which exclude minority and lowincome persons from residing within New Castle.

G. Preliminarily and permanently enjoin the Interior defendants from disbursing or transferring Federal funds to New Castle for the purchase or development by New Castle of the Turner Swamp Public Recreational Facility unless and until Tri-State reviews and approves the grant application. H. Declare that defendant Tri-State, in failing to review the Federal grants, has violated plaintiffs' rights, privileges and immunities under: 1. 42 U.S.C. § 2000(d); 2. 42 U.S.C. \$ 3334; 3. Office of Management and Budget Circular A-95. I. Order that defendant Tri-State review the grant . applications of New Castle for Federal funding pursuant to the Office of Management and Budget Circular A-95, 42 U.S.C. \$ 3334

J. Grant such other and further relief as would appear equitable and just, and that the Court will allow the costs herein

including reasonable attorneys' fees, against the defendants.

Respectfully submitted

RICHARD F. BELLMAN LOIS D. THOMPSON

Suburban Action Institute 150 White Plains Road Tarrytown, New York (914) 631-8321

Attorneys for Plaintiffs

RACHEL EVANS, STEVEN R. KIDD, FERNELL PATTERSON, and WALTER B. BROOKS, JR., on behalf of themselves and all others similarly situated,

Plaintiffs.

NOTICE OF MOTION

73 Civ. 3475

(MP)

-against-	
JAMES T. LYNN, in his capacity as Secretary of the Department of Housing and Urban Development:	
JOSEPH D. MONTICCIOLO, in his capacity as Acting Area Director of the New York	
Office of the Department of Housing and Urben Development;	;
S. WILLIAM GREEN, in his capacity as	;
Regional Administrator of the Department of Housing and Urban Development; THE	:
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; DOUGLAS CARROLL, in his capacity as	:
Director of Tri-State Regional Planning Commission; THE TRI-STATE REGIONAL	:
PLANNING COMMISSION; ROCERS C. B. MORTON, in his capacity as Secretary of the	:
Department of the Interior; JAMES G. WATT, in his capacity as Director of the	:
Bureau of Outdoor Recreation of the Department of the Interior; and	:
THE DEPARTMENT OF THE INTERIOR.	

Defendants.

SIR:

affidavit of V. Pamela Davis, an Assistant United States
Attorney in the office of Paul J. Curran, United States
Attorney for the Southern District of New York, attorney
for the Federal defendants, the undersigned will move

- 170-

the total the tenter of

this Court, at Room 607-E, United States Courthouse,

Foley Square, New York, New York on 19th day of October

at 2:15 p.m. in the afternoon of that day, or as soon

thereafter as counsel can be heard, for an order dismissing
the complaint, pursuant to Rules 12(b)(1) and (6) of the

Federal Rules of Civil Procedure.

Dated: New York, New York

September 13, 1973

Yours etc.

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the Federal Defendants

V. PAMELA DAVIS
Assistant United States Attorney
United States Court House
One Foley Square
New York, New York

Room 331B (264-6333)

TO: Suburban Action Institute 150 White Plains Road Tarrytown, New York 10591

> Robert J. Fieldman Wikler, Gottlieb, Taylor & Howard 40 Wall Street New York, New York 10005

The state of the s

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

RACHEL EVANS, STEVEN R. KIDD, FERNELL PATTERSON, and WALTER B. BROOKS, JR., on behalf of themselves and all others similarly situated.

Plaintiffs.

AFFIDAVIT

73 Civ 3475

(MP)

-against-

JAMES T. LYNN, in his capacity as Secretary of the Department of Housing and Urban Development: JOSEPH D. MONTICCIOLO, in his capacity as Acting Area Director of the New York Office of the Department of Housing and Urban Development: S. WILLIAM EREEN, in his capacity as Regional Administrator of the Department: of Housing and Urban Development; THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT: DOUGLAS CARROLL, in his capacity as Director of Tri-State Regional Planning : Commission; THE TRI-STATE REGIONAL PLANNING COMMISSION: ROGERS C. B. MORTON, in his capacity as Secretary of the Department of the Interios; JAMES G. WATT. in his capacity as Director of the Bureau of Outdoor Recreation of the

Department of the Interior; and

THE DEPARTMENT OF THE INTERIOR.

State of New York)
County of New York)
Southern District of New York)

V. PAMELA DAVIS, being duly sworn depose and says:

1. I am an Assistant United States Attorney in the Office of Paul J. Curran, United States Attorney for the Southern District of New York and, as such, am in charge of the defaunce of this action.

-18aa -

- 2. I make this affidavit in opposition to the motion for a declaration of a class action filed by the plaintiffs on or around September 6, 1973 and, in support of the attached motion to dismiss the complaint filed by the Federal defendants.
- 3. This action was brought on by summons and complaint served nm this office on August 10, 1973. The motion to dismiss the complaint as to the Federal defendants is filed in lieu of these answer which is due October 9, 1973.
- 4. The four plaintiffs are, according to the complaint, black residents of towns in Westchester County other than the town of New Castle and represent both low and moderate incomes. (Complaint, pars. 3-6).
- 5. The proposed class is "all Black,

 Spanish-speaking and other minority persons and all persons of low income who reside in Westchester County. . ."

 (Plaintiffs memo in Support of Motion, p.3).
- of the Departments of the Interior, ("Interior") and Housing and Urban Development ("HUD"), the departments themselves, the Regional Administrator for Region II of HUD, the Acting Area Director of the HUD New York Office, and the Director of the Burasu of Outdoor Recreation of the Department of Interior (Complaint, pars.7-13).

マンス・マクタがある ころうし

- 7. The non-federal defendants are the Tri-State Regional Planning Commission ("Tri-State") and its Director. (Complaint, pars 14-15).
- 8. This action is grounded upon two separate Federal grants by the Departments of Interior and HUD.
- 9. The HUD grant was made pursuant to 42 U.S.C. 3101 et seq, the Community Facilities and Advance Land Acquisition Act, specifically \$3102 of that Act which provides for grants for basic water and sewer facilities.
- 10. The applicant for the grant was the King-Greeley Sanitary Sewer District ("Sewer District"), an entity separate from the Town of New Castle created pursuant to McKinney's Town Law, Article 12-A.
- 11. The contract for a grant of \$358,000 was signed by the Sewer District on December 27, 1972 and by HUD on January 17, 1973.
- 12. The funds, approximately half of the project cost, have not yet been disbursed to the Sewer District.
- 13. Defendant Tri-State, by letter dated August
 4, 1971 found the sewer project of "non-regional significance." (Complaint, par 26). The project was referred to
 the Westchester County Board of Planning which approved it.
- 14. The Interior grant was made pursuant to

 16 U.S.C. 460(1) et seq, titled Outdoor Recreation Programs

 18 c a -

specifically \$4601-8 of that Act which empowers the

Secretary of Interior to provide financial assistance to

States or, as here, to a political subdivision designated
by the State, for purposes of land and water conservation
including the costs of acquisition af land.

- purpose of acquisition of the land known as Turner Swamp for development as a public park and recreation area was made by execution of an agreement between Interior and the Town on January 5, 1973 and amended slightly on June 7, 1973. The grant, which has not yet been disbursed, comprises approximately half of the price of the land.
- 16. By letter dated September 10, 1973 TriState referred the project to the Westchester County;
 Board of Plenning which approved the project on October 1,
 1973.
- 17. Plaintiffs have made no sllegation that
 the Sewer District as proposed and funded would in any
 way be discriminatory, that it would not serve equally all
 residents, black or white, rich or poor.
- 18. Plaintiffs have made no allegation that the Park as proposed and funded would in any way be discriminatory, that it would not be open to all who chose to make use of it.
- 19. Plaintiffs sole allegations of discrimination are directed at the zoning ordinances of -1800

やないというともないないのできる

1

the town of New Castle. No discrimination has been alleged against any Federal defendant or Federal program.

WHEREFORE, defendants request judgment dismissing the complaint pursuant to Rules 12(b)(1) and (6) of the Federal Rules of Civil Procedure.

V. PAMELA DAVIS

Assistant United States Attorney

Sworn to before me this

day of September 1973.

WALTER G. BRANNON Notary Public, State of New York No. 24-0394500 Qualified in Kings County Cert. filed in New York County Term Expires March 30, 1475 RACHEL EVANS, et al.,

Plaintiffs,

73 Civ. 3475 (MP)

-against-

JAMES T. LYNN, et al.,

Defendants.

NOTICE OF MOTION FOR PRELIMINARY INJUNCTION

TO COUNSEL FOR DEFENDANTS:

please Take Notice that upon the attached affidavit of PAUL DAVIDOFF, the verified complaint and all other papers heretofore filed in this matter, the plaintiffs will move this Court before the Honorable MILTON POLLACK, at the United States Court House, Foley Square, New York, New York, on the 19th day of October, 1973, at 2:15 P.M., or as soon thereafter as counsel may be heard, for an order:

Granting plaintiffs a Preliminary Injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure (a) enjoining the defendant HUD from transferring or disbursing any funds to New Castle for the King-Greeley sewer district; and (b) enjoining the defendant Department of the Interior from transferring or disbursing any funds to New Castle for the acquisition and/or development of the Turner Swamp Recreational Facility.

Dated: October 9, 1973.

TO: PAMELA V. DAVIS
Assistant U.S.Attorney
U.S. Court House
Foley Square
New York, N.Y.

Yours, etc.,
LOIS D. THOMPSON
RICHARD F. BELLMAN
Suburban Action Institute
150 White Plains Road
Tarrytown, N.Y. 10591

LOIS D. THOMPSON

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

_____X

RACHEL EVANS, et al.,

Plaintiffs

Civil No. 73 Civ. 3475 (MP)

v.

JAMES T. LYNN, et al.,

COUNTY OF WESTCHESTER

AFFIDAVIT

Defendants

STATE OF NEW YORK) ; SS,:

PAUL DAVIDOFF, being duly sworn, deposes and says:

- 1. I am a director and founder of Suburban Action
 Institute, a not-for-profit charitable trust established in
 1969 to conduct research and action programs seeking to equitably
 distribute the resources of the suburbs to families of all racial
 and income groups. I am also a member of the Board of Governors
 of the American Institute of Planners. Until 1969, I was
 Chairman of the Graduate Program of Urban Planning at Hunter
 College and Professor of Urban Planning. Before that, I was
 Associate Professor of Urban Planning at the University of
 Pennsylvania.
- 2. I have been a consultant to numerous government agencies including the United States Commission on Civil Rights, the National Commission on Urban Problems (the Douglas Commission) and the President's Commission on Urban Housing (the Kaiser Commission). I was planning consultant to the Pennsylvania Department of Community Affairs when that body determined to withhold state open space funds from a suburban community which

- 206 -

had an exclusionary zoning ordinance. I have authored and co-authored many articles and studies in the areas of land-use planning and zoning.

3. I file this affidavit in support of the plaintiffs' motion for a preliminary injunction enjoining the Department of Housing and Urban Development (HUD) defendants from granting or transferring any Federal funds to the Town of New Castle for the construction of the King-Greeley sewer district and enjoining the Department of Interior defendants from granting or transferring any Federal funds to the Town of New Castle for the purchase or development of the Turner Swamp Public Recreational Facility until such time as this court determines whether such funds can be legally granted and transferred to the Town of New Castle.

THE FEDERAL GRANT PROCEDURE

4. As a professional planner and director of Suburban Action Institute, I am familiar with the various federal programs providing grants-in-aid for land-use planning, housing, community development, and recreation areas. I have reviewed the regulations and procedures of a number of federal agencies in order to determine the extent to which those agencies provide for equal access to all racial and economic groups in their programs. I am particularly familiar with the HUD procedures for site selection and project selection since I worked with the numerous civil rights groups that vehemently protested HUD's failure to adhere to its obligations under Title VIII of the Civil Rights Act of 1968 when it promulgated those regulations.

- 5. In December 1971, the Leadership Conference on Civil Rights, a coalition of more than 100 national civil rights, labor, religious and civic organizations, together with the Washington-based Center for National Policy Review, formally commented on HUD's proposed Project Selection System. Initially, the organizations noted that the proposed regulations made no reference to Title VIII or to Executive Order 11063 and stated that the regulations should meet the requirements of all civil rights statutes, not just Title VI of the Civil Rights Act of 1964.
- 6. The Leadership Conference comments scress that the civil rights acts require HUD, in all its programs relating to housing and urban development, "to assure that program benefits will, in fact, flow to low and moderate income families." The comments specifically note the relationship between "appropriate zoning" and a realistic plan for expansion of low and moderate income housing.
- 7. HUD failed to adopt the amendments to its proposed regulations which the Leadership Conference on Civil Rights insisted would be necessary to bring those regulations in conformance with Title VIII. To this date HUD has failed to adopt project selection criteria relating to sewer facilities and open space which meet the requirements of Title VIII. As a result local communities can and continually do obtain sewer or open space grants even though their housing and land-use policies preclude the development of housing for black and Spanish-speaking and low income families. It is clear to those who have attempted to monitor federal agency compliance with civil rights laws and

policies that HUD has not implemented meaningful enforcement techniques - the HUD "point system" merely provides a gloss and appearance of agency compliance.

- 8. HUD's failure to implement Title VIII in its open space grants is doubly significant since the Department of Interior is charged with coordinating its recreation grants with HUD when these grants are used to obtain land in an urbanized area. The area of New Castle in which the Turner Swamp Recreational Facility is to be located has been designated an urban area.
- 9.(Basically, HUD and Interior (for its recreational grants in urbanized areas) simply look at a map of the project area when evaluating compliance with Title VI. On that map an applicant shows the location of the proposed project and areas of minority concentration, if any. If an area of minority concentration is not served by the proposed project, the applicant must explain why not; if the proposed recreational facility is not near an area of minority concentration, an applicant must "discuss its accessibility to residents" of areas of minority concentration.
- area which the sewer fund applicant is authorized to serve without paying any attention to the region in which the applicant functions ignores the role which sewer systems play in shaping the parameters of future community development, and the impact of that development on low and moderate income housing opportunities within the region. This relationship also was ignored

by the defendant Tri-State Regional Planning Commission when it held that it did not have to review the New Castle sewer grant application because, Tri-State asserted, the proposed sewer system was of "non-regional" significance. I shall deal with the specifics of that sewer system at length, below.

11. Study of the region in which New Castle is located and of New Castle itself reveals both the regional significance of the grants at issue here and the discriminatory character of New Castle's land use, housing, and zoning policies.

NEW CASTLE AND THE REGION

- 12. The Town of New Castle is located in the central part of Westchester County, no more than 20 miles from the Southern Westchester cities of Mount Vernon, New Rochelle, White Plains and Yonkers, and only 35 miles from New York City.
- 13. New Castle had a total population in 1970 of 14,685 of whom only 189 persons or 1.3% were non-white. Yet, as of 1970, 10% of Westchester County's population was non-white and 23% of the population of the City of New York was non-white.
- 14. Non-whites who moved into Westchester County during the decade 1960-1970, have been constained to live in limited sections of the County, exacerbating already existing racial ghettoization in the County. Thus, while Westchester's

total non-white population increased by 28,897 persons from 1960 to 1970, 21,000 of those persons, or 72%, moved into the cities of Mount Vernon, New Rochelle, White Plains and Yonkers which already housed 63.4% of the County's non-white population as of the 1960 census. Most notably, Mount Vernon's non-white population grew by 11,000 during the decade, changing from a city which was 19% non-white in 1960 to one which was 36.3% non-white a decade later. By contrast, while New Castle gained -4,522 new residents in the decade 1960-1970, only 90, or less than 2%, were non-white.

- 15. New Castle's population is not only almost exclusively white, it is also disproportionately wealthy. While the median family income of New York State was \$8,510 in 1970 and that of Westchester County was \$11,349, the median family income of New Castle was \$22,005.
- on the basis of income, 20% of New Castle's population would, of course, have incomes in the top fifth or quintile of those living in the New York S.M.S.A.; i.e., incomes of \$16,438 or above.

 This most definitely is not the case. In 1970, 63% of New Castle's families had incomes in the top quintile, while 12% of its families had incomes in the bottom quintile. Moreover, of New Castle's population increase between 1950 and 1970 of 2,742 families, 75% had incomes in the top quintile. In contrast, Mount Vernon lost 19% of its population in the top quintile in 1950-1970, while 71% of its new population had incomes in the bottom two quintiles.

- 17. It is no accident that New Castle has a disproportionately white, disproportionately wealthy population. Under the Town's land-use laws and policies, specifically its zoning ordinance and Master Plan, only the most wealthy can afford to live in New Castle.
- 18. Almost 90% of New Castle, or some 12,900 acres, is zoned for single-family, residential development on parcels of no less than one or two acres. The zoning ordinance makes provision for single-family houses on relatively small lots (7,500 square feet), but no vacant land is actually zoned for such development. Two-family houses, garden apartments and all other forms of multi-family housing are prohibited. Multi-family housing is the least expensive form of housing to build. Single-family houses on large lots are extremely expensive due to high per-unit land and improvement costs. Yet, such housing is virtually the only form of housing which the law permits in New Castle.
- 19. The median value of single-family houses in New Castle in 1970 was over \$50,000, the highest census category.

 Only 6.4% of the owner-occupied, single-family houses in New Castle were valued at less than \$25,000. Vacant-for-sale, single-family housing in New Castle was selling at an average price of \$54,243 in 1970.
- 20. It is clear that New Castle's housing is available to only a small fraction of the housing market. The federal government and mortgage banks generally hold that a family cannot afford a house which sells for more than twice that family's annual

income. Applying that formula to New Castle, it is clear that families earning under \$25,000 cannot afford most of the new housing in New Castle or most of the used-for-sale housing. This is illustrated by the following list of prices of houses advertised for sale in the Patent Trader of June 28, 1973 and the New York Times of July 1, 1973. That list shows that the average sales price for houses in Chappaqua, the section of New Castle to be sewered with the aid of federal funds, presently is \$86,426.

	, Presencij is
PATENT TRADER	NEW YORK TIM
June 28, 1973	July 1, 197
Chappaqua	Chappaqua
	<u> </u>
\$88,500	Mid \$40's
\$95,000	\$ 59,500
\$39,500	\$160,000
\$49,500	\$160,000
\$47,500	\$115,000
\$49,500	\$ 98,500
\$51,000	\$ 99,000
\$49,500	\$ 39,500
	\$ 79,500
New Castle	\$ 93,500
\$52,500	\$ 70,000
High \$70,000	\$ 40,000
\$60,000	\$115,000 \$ 98,500 \$ 99,000 \$ 39,500 \$ 79,500 \$ 70,000 \$ 40,000 \$ 49,500 \$ 73,500 \$ 89,500 \$ 89,500 \$ 81,500 \$ 96,500 \$ 112,000
400,000	\$ 73,500
	\$ 89,500
	\$ 52,500
	\$ 81,500
· · · · · · · · · · · · · · · · · · ·	.\$ 96,500
	\$112,000
,	\$ 95,000
	\$ 71,500
	\$ 95,000 \$ 71,500 \$ 49,500
	\$150,000
	\$ 77,500
	\$165,000
	\$205,000
	\$ 98,500
	\$130,000
	\$ 88,500
	\$ 50,500
	\$ 58,000
	\$160,000

New Castle \$ 84,500

\$135,000

vide for housing valued under \$25,000 discriminates on the basis of race because black and Spanish-speaking people are disproportionatley poor. Thus, for example, while the median income of all families in Westchester County was \$13,784 in 1970, the median income for black families was \$8,639 and the median income of Spanish-speaking families was \$7,889. In 1970, the median family income of black families was 63% that of all families in the County. Moreover, while 17% of black families had incomes over \$15,000, a full 46% of white families in the County had such incomes.

almost all housing on the market today in New Castle, then according to the 1970 Census, practically all the blacks in the New York Standard Metropolitan Statistical Area (SMSA) and in Westchester would be excluded from acquiring such housing. The Census reveals that only 3% of Westchester's Negro population and 1.5% of the Negro population of the SMSA could afford housing in New Castle. (The per cent of the white population that could afford such housing is approximately six times as great in both Westchester and in the New York SMSA.) The data for Puerto Ricans indicates that only 4.2% of Westchester's Puerto Rican families and 0.6% of the SMSA's Puerto Rican families could afford to live in New Castle.

23. The Town of New Castle has absolutely no intention of changing its discriminatory land-use practices despite the fact that with approximately 7,000 acres of land presently vacant

and suitable for development, the Town could make a significant contribution toward meeting the region's housing needs and providing a decent living environment for some of those now locked into the area's slums. The Town's Master Plan sets as goals "maintaining New Castle as a single-family residential community" and "protect[ing] the present character of residential areas".

- 24. The New York State Urban Development Corporation (UDC) has proposed that 100 units of low and moderate-income housing be constructed in New Castle. The Town has adamantly opposed this UDC proposal.
- intensive residential development is a statement in the Town's Master Plan that "the provision or extension of water and sewers in low residential areas shall not . . . be considered as a basis for rezoning to higher residential density." The intent is clear. New Castle desires federal money for a community improvement, but will do nothing to make the community accessible to those who are presently excluded.
- Westchester County will need 27,900 low and moderate income housing units by 1980. It will require 34,000 additional units by 1990. As of 1968, 17,500 Westchester families lived in substandard housing. The Planning Department anticipates that most of the new jobs which will be created in the County in the next few years will pay less than \$10,000 a year. Persons with such incomes will be hard pressed to find housing in most of Westchester County, and specifically in New Castle. Indeed, at present, New Castle is the home of one major employer, Readers Digest, most of whose employees cannot afford to live in New Castle.

27. In January and February, 1973, in my capacity as Director of the Suburban Action Institute, I, together with Neil N. Gold, also a Director of Suburban Action Institute, informed HUD and the Department of the Interior of all the above information relating to the Town of New Castle and suggested that the Town's applications for funding be denied. Despite their knowledge of all the above facts, HUD and the Department of the Interior proceeded to process and approve the applications for funding.

28. To expend limited Federal funds for park and recreational development while low-income and minority persons who are forced to live in areas of high density development suffer from a lack of adequate recreational facilities, is a blatent misallocation of scarce resources. Similarly, to construct a sewer which will have the capacity to handle the needs of the area only if that area is developed at low densities reinforces the discriminatory and exclusionary zoning practices of the Town.

PAUL DAVIDOFF

Sworn to before me this

9 day of October, 1973

NINA GERONIMO Notary Public, State of New York No. 41-1413500

Qualified in Rockland County Commission Expires March 30, 197 UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

RACHEL EVANS, et al.,

Plaintiffs,

: Civil No. 73 Civ. 3475 (MP)

v.

JAMES T. LYNN, et al.,

AFFIDAVIT

Defendants.

STATE OF INDIANA) : ss.:
COUNTY OF ST. JOSEPH)

HOWARD A. GLICKSTEIN, being duly sworn, deposes and says:

- 1. I file this affidavit in support of plaintiffs' motion for preliminary injunction in the above-titled action.
- 2. I am Director of the Notre Dame Center for Civil Rights which is a research and policy development institute at the University of Notre Dame. The Center was established in July 1973.
- 3. From 1968-71 I served as staff director of the United States Commission on Civil Rights, a position I was appointed to by President Nixon. The Commission is an independent, bipartisan agency established by Congress in 1957. Among other things, the Commission is charged with the responsibility to collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution; to appraise Federal laws and policies with respect to equal protection of the laws; and to submit reports, findings and recommendations to

the President and Congress. During most of my tenure as staff director, Reverend Theodore M. Hesburgh, C.S.C., President of the University of Notre Dame, served as Chairman of the Commission.

I was General Counsel for the Commission.

- 4. From 1960-1965 I served as staff attorney in the Civil Rights Division of the Department of Justice. I am a member of the Bar of the State of New York.
- 5. As part of my professional civil rights activities, I have sought on a continuing basis to evaluate the efforts of federal agencies and departments to comply with and effectuate the nation's civil rights policies. In this regard, as Staff Director of the Commission on Civil Rights, I encouraged the Commission to undertake as a major aspect of its work a review of the federal civil rights enforcement effort. The Commission engaged in such a project, culminating in a public hearing held in Washington, D.C. on this subject in 1971 and in the publication of several voluminous reports on this matter. The first report was issued in October, 1970 and is entitled "Federal Civil Rights Enforcement Effort." This report was supplemented by two updating reports in May, 1971 and in 1972. In January 1973, after I resigned as Staff Director, the Commission published its latest document on the subject entitled "The Federal Civil Rights Enforcement Effort -- A Reassessment."
- 6. As part of the background work for its reports, in addition to taking testimony at its 1971 hearing, the Commission staff engaged in a substantial program of examining federal agency files, interviewing federal agency personnel, and soliciting agency responses to questionnaires. At the time of the release of the first 1970 report, Chairman Hesburgh stated publicly that

the Report was one of the Commission's most important work efforts to date. My role was to plan, supervise and coordinate this entire federal enforcement project.

- 7. Fundamental to the federal agency civil rights compliance efforts are the requirements of Title VI of the Civil Rights Act of 1964 and Title VIII of the Fair Housing Law of 1968. These laws mandate that all federal agencies monitor categorical grants-in-aid for community development to insure that the benefits from such development are equally available to all citizens regard+ less of race, creed or color, and that fair housing opportunities are promoted in all communities being developed with federal assist tance. Based on my years of experience in the civil rights area, I have concluded that this Congressional mandate has not been and will not be effectuated so long as federally-funded community development continues apace in communities which exclude low income, minority housing opportunities through their land-use laws and otherwise. As long as a federal, multi-billion dollar effort to construct and shape tomorrow's communities proceeds blindly without regard to the needs of black, Spanish-speaking urban poor, civil rights enforcement is an empty slogan.
- 8. I think it important that this court be apprised of certain Commission findings and conclusions set forth in its public reports on the federal enforcement effort.
- 9. In the 1970 Report, the Commission gave special consideration to the degree of implementation of Sections 808(e) (5) and 808(d) of the 1968 Fair Housing Law which require the Secretary of Housing and Urban Development and the heads of all other executive agencies to administer their programs affirmatively to achieve fair housing opportunities. The Commission concluded

that the use made by HUD and other departments of these two broad directives was the key determinant of the success of the Fair Housing Law.

- 10. The Commission's investigation of HUD in 1970, however, revealed that the agency had devoted itself to processing individual complaints of housing discrimination to the exclusion of all other responsibilities under the Act.
- 11. It was found that HUD was failing to exercise its mandated leadership role by not bringing the resources of other agencies to bear on the effort to achieve open housing. When President Lyndon Johnson, for example, requested all Federal departments to submit reports on their efforts under the Fair Housing Act, HUD prepared summaries of those reports with recommendations designed to strengthen the civil rights effort; yet, HUD kept this report in its files, sharing it with neither the President nor other agencies.
- 12. The Commission also concluded in the 1970 report that HUD had not begun to take any "affirmative" action with respect to its own programs. While urging other institutions to collect racial and ethnic data on the impact of their programs, HUD gave no indication it was prepared to assess such racial data in connection with HUD administered programs.
- 13. The Commission recognized that Title VIII compliance reviews of housing and community development programs were critical if the Act was not to be a meaningless, academic exercise. The Commission also recognized that whatever enforcement weaknesses exist in the "affirmative" action section of Title VIII are overcome by the broad enforcement powers contained in Title VI and

Executive Order 11063. This means, for example, that HUD has the authority and obligation to seek fund termination in those programs which are not affirmatively promoting fair housing opportunities.

- familiar, and my own personal survey of the federal civil rights enforcement effort, indicates that HUD is still focusing on processing individual complaints and is only conducting compliance reviews of HUD programs in a few instances under Title VI. As the Reassessment Report notes, in 1972 HUD conducted 186 Title VI compliance reviews of housing programs even though HUD funded some 12,000 local housing agencies during that period. HUD carried out no compliance reviews whatsoever of community development programs in communities that might be engaged in racially exclusionary housing and land-use practices.
- element in the selection criteria for community development programs, there is no requirement that any effort be made to end discrimination in the total housing market. Moreover, one exception to even this limited effort by HUD is the HUD program for water and sewer grants which has no requirement that steps be taken to expand low and moderate-income housing opportunities on a non-discriminatory basis, as do the other programs. The Commission, in the 1973 Reassessment Report, said that "it is of particular importance that regulations for evaluation of water and sewer applications . . . have equal housing opportunity requirements. Communities which apply for such programs often lack fair housing legislation and often have exclusionary landuse policies." n.25 p. 108.
- · 16. In contrast to HUD's performance, the 1973 Report commends the civil rights effort of the Environmental Protection

Agency because that Agency has begun to inquire into the exclusionary impact of a community's land-use laws before approving funds for its own Waste Treatment Construction Program. 17. Where program compliance review is done by HUD, it is almost exclusively voluntary compliance. Fund termination, referral to the Justice Department for litigation and other enforcement techniques contemplated by Title VI and Title VIII are not being used. 18. The 1973 Report concluded that HUD's reliance on voluntary compliance coupled with a lack of Title VIII compliance reviews constituted a serious defect in that department's civil rights enforcement effort. Thus, the Commission stated, "The greatest deficiency in HUD's compliance program is HUD's failure to conduct any compliance reviews under Title VIII" (at p. 112), and "HUD's greatest failing in its enforcement of Title VI . . .

is that . . . HUD's actions are directed almost exclusively toward

achieving voluntary compliance" (at p. 118).

19. In the 1970 Report, the Commission also severely criticized the Department of Interior's entire administrative civil rights enforcement structure with respect to compliance reviews. The Commission found that none of the compliance investigators had received civil rights training and that, in connection with Bureau of Outdoor Recreation programs, the reviewer relied on the State liason officer to fill out the review report. (The State Liaison Officer is an individual named by the Governor of an applicant state to represent him for purposes of the Land and Water Conservation Fund Act.)

20. By 1973, the Department of Interior had not

Department had undertaken no Title VIII activities despite the firm command of that Act. The Commission's 1973 Report also indicated that Interior had a very poor record of Title VI enforcement, criticizing in particular the lack of administrative procedures necessary for a compliance program, including the critical absence of means to determine whether had outdoor recreation programs were accessible on a equal basis to minority citizens.

- 21. HUD's site selection criteria for water and sewer facilities include a reference to the extent of low and moderate-income housing available within an applicant community. In my opinion, these regulations are an inadequate response to HUD's obligation under Title VIII to promote affirmatively fair housing, particularly since the regulations fail even to refer to housing available on a non-discriminatory basis. Any applicant may qualify for sewer funding without demonstrating that any fair housing opportunities exist within the community. The regulations do not even deal with the problem that most prevailing patterns of residential segregation are regional and require regional solutions.
- failed to promulgate regulations governing project selections which reflect the need for non-discriminatory access to recreation areas and the need for fair housing in applicant communities. This agency appears oblivious to the role its community development programs play in determining racial and economic residential segregation.
- 23. The Commission, in focusing on federal enforcement procedures, has been particularly concerned with the so-called A-95 review of applications for federal funding by local, state and interstate planning agencies. These reviews are carried out

- 37u -

pursuant to the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231) and the Demonstration Cities Act (42 U.S.C. 3334) and represent a significant step in the processing of applications for federal funding. The Commission heard testimony from representatives of the Office of Management and Budgetat its 1971 Washington hearing on the civil rights aspects of A-95 and has succeeded in persuading OMB to promulgate A-95 regulations which require that civil rights/equal housing opportunities issues be considered by the area planning agencies in their reviews. It is my opinion that an area planning agency has not undertaken an adequate A-95 review if it has falled to consider the housing and land-use practices of the applicant community. This is particularly true in regard to community development grants, like water and sewer projects, which shape the contours of future growth in an area.

HOWARD A. GLICKSTEIN

Sworn to before me this

/Sday of October, 1973.

Michael of Spe tourske

My commission expires June 18, 1977

RACHEL EVANS, STEVEN R. KIDD, FERNELL PATTERSON, and WALTER B. BROOKS, JR., on behalf of themselves and all others similarly situated,

: EN SEP 2 0 1973

Plaintiffs,

-against-

JAMES T. LYNN, in his capacity as Secretary of the Department of Housing and Urban Development; JOSEPH D. MONTICCIOLO, in his capacity as Acting Area Director of the New York Office of the Department of Housing and Urban Development; S. WILLIAM GREEN, in his capacity as Regional Administrator of the Department of Housing and Urban Development; THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; DOUGLAS CARROLL, in his capacity as Director of Tri-State Regional Planning Commission; THE TRI-STATE REGIONAL PLANNING COMMISSION; ROGERS C. B. MORTON, in his capacity as Secretary of the Department of the Interior; JAMES G. WATT, in his capacity as Director of the Bureau of Outdoor Recreation of the Department of the Interior; and THE DEPARTMENT OF THE INTERIOR.

: NOTICE OF MOTION

: 73 Civ. 3475 (MP)

Defendants.

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of ROBERT J. FELDMAN, sworn to the 20th day of September, 1973, the undersigned will move this Court, at Room 607-E, in the Courthouse, Foley Square, New York, New York, on the 19th day of October, 1973, at 2:15 in the afternoon of that day, or as soon thereafter as counsel can be heard, for an order dismissing the complaint as against defendants CARROLL and TRI-STATE

REGIONAL PLANNING COMMISSION, pursuant to Rules 12(b)(1), (2) and (6) of the Federal Rules of Civil Procedure, and for such other and further relief as to the Court may seem just and proper.

Dated: New York, New York, September 24, 1973.

Yours, etc.

WIKLER GOTTLIEB TAYLOR & HOWARD

BY: Harry A. Corrier

A Member of the Firm

Attorneys for Defendants
J. DOUGLAS CARROLL, JR. (sued herein
as DOUGLAS CARROLL) in his capacity
as Director of Tri-State Regional
Planning Commission, and TRI-STATE
REGIONAL PLANNING COMMISSION
40 Wall Street
New York, New York 10005
212-422-1080

TO: RICHARD F. BELLMAN and LOIS D. THOMPSON, Attorneys for Plaintifffs, Suburban Action Institute 150 White Plains Road Tarrytown, New York

PAUL J. CURRAN, United States Attorney for the Southern District of New York, Attorney for the Federal Defendants One Foley Square New York, New York RACHEL EVANS, et al.,

Plaintiffs,

-against- : AFFIDAVIT

JAMES T. LYNN, et al., : 73 Civ. 3475

Defendants. : (MP)

STATE OF NEW YORK) : SS.:

ROBERT J. FELDMAN, being duly sworn, deposes and says:

- 1. I am an attorney associated with WIKLER GOTTLIEB
 TAYLOR & HOWARD, the attorneys for defendants J. DOUGLAS CARROLL,
 JR., (sued herein as Douglas Carroll), in his capacity as
 director of Tri-State Regional Planning Commission, and TRISTATE REGIONAL PLANNING COMMISSION.
- 2. This affidavit is submitted in support of the motion of said defendants to dismiss the complaint herein as against them, upon grounds of sovereign immunity.
- 3. The summons and complaint in this action was served upon the moving defendants on or about August 16, 1973. By stipulation dated August 27, 1973, and So Ordered August 31, 1973, the time of said defendants to answer or otherwise move with respect to the complaint was extended to and including September 26, 1973.

- 4. As alleged in paragraph 14 of the complaint, defendant TRI-STATE REGIONAL PLANNING COMMISSION is a public agency with planning responsibilities in New York, Connecticut and New Jersey. As alleged in paragraph 15 of the complaint, defendant Carroll is director of TRI-STATE.
- 5. TRI-STATE REGIONAL PLANNING COMMISSION (formerly Tri-State Transportation Commission) was created by Interstate Compact among the States of Connecticut, New Jersey and New York.
- 6. Article IV, Section 3 of said Interstate Compact, enacted into law and currently in effect in each of said three States, provides as follows:

"The Commission is declared to be an instrumentality of the party states exercising a governmental function. It shall enjoy the sovereign immunity of the party states and may not be sued in any court or tribunal whatsoever; nor shall it have the power to pledge the credit of the party states or any of them, or to impose any liability upon them, or any of them, directly or indirectly, either by tort, contract or otherwise."

7. Upon information and belief, explicit immunity from suit above provided has not been waived at any time by any of the party states.

WHEREFORE, I respectfully pray that the complaint herein be dismissed as against the moving defendants. .

Sworn to before me this

20th day of September, 1973.

TOBY KRUGER
Commissioner of Deeds
City of New York 2-543
Certificate filed in New York County
Commission Expires July 1,1975

S/ Robert J. Feldman UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

-----x

RACHEL EVANS, STEVEN R. KIDD, FERNELL:
PATTERSON and WALTER B. BROOKS, JR.,
on behalf of themselves and all others:
similarly situated,

Plaintiffs,

-against-

NOTICE OF MOTION

:

:

JAMES T. LYNN, Secretary, Department of Housing and Urban Development, et al.,

: 73 Civ. 3475 (MP)

Defendants,

-against-

TOWN OF NEW CASTLE and KING GREELEY SEWER DISTRICT,

Defendants-Intervenors

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavits of Richard E. Burns, sworn to on April 13, 1974 and Arthur M. Handler sworn to on April 15, 1974, and the exhibits annexed thereto, the stipulation of facts dated April 5, 1974, the transcript of deposition testimony of plaintiff Rachel Evans, and all other papers heretofore filed with the Court, defendants-intervenors hereby join in the motion of the federal defendants for an order dismissing the complaint pursuant to Rules 12(b)(1) and (6) of the Federal Rules of Civil Procedure.

Dated: New York, New York April 15, 1974

Yours, etc.,

GOLENBOCK AND BARELL Attorneys for Defendants-Intervenors 60 East 42nd Street

New York, New York 10017 (212) 98673300 / / / /

BUE VITALIA

Arthur M. Handler

-43a-

RACHEL EVANS, STEVEN R. KIDD, FERNELL PATTERSON and WALTER B. BROOKS, JR., on behalf of themselves and all others similarly situated.

Plaintiffs,

-against-

JAMES T. LYNN, Secretary, Department of Housing and Urban Development, et al.,

Defendants,

-against-

TOWN OF NEW CASTLE and KING GREELEY SEWER DISCTRICT,

Defendants-Intervenors. :

DEFENDANTS-INTERVENORS
AFFIDAVIT

73 Civil 3475 (MP)

STATE OF NEW YORK) : ss.:

COUNTY OF NEW YORK)

RICHARD E. BURNS, being duly sworn, deposes and says:

:

1. I am the duly elected Supervisor of the Town of New Castle ("Town"), have previously served as a councilman and am a practicing attorney. As such I participated in the proceedings and discussions which led to the decision of the King-Greeley Sewer District ("King-Greeley") to apply for a federal grant from the Department of Housing and Urban Development ("HUD") for the proposed sewer system, and to the decision of the Town to apply for a federal grant from Department of Interior, Bureau of Outdoor Recreation ("BOR") to preserve the wetlands of Turner Swamp. I have personal knowledge of the facts set forth in this affidavit.

2. It is not my purpose to resterate the points made by the governmental defendants in support of the accuracy of the ratings given these projects and the legal validity of the contracts HUD and BOR have made with defendants-intervenors. Rather, I wish to bring certain relevant facts to the attention of the Court which have not heretofore been adduced and rebut certain arguments of plaintiffs which are contradicted by the facts.

DESCRIPTION OF DEFENDANTS-INTERVENORS

- 3. The Town consists of part of the Village of Mt.

 Kisco, the hamlets of Chappaqua and Millwood and parts of Ossining and Briarcliff. It is located approximately 35 miles north of Manhattan and has a land area of approximately 25 square miles.

 Its present population, including that portion of the Village of Mt. Kisco which lies within the Town, is approximately 20,000 people. The population of the Town outside of the Village of Mt. Kisco is approximately 14,500 people.
- 4. A copy of the zoning map of the Town is annexed as Exhibit A. The area of the Turner Swamp and King-Greeley is outlined in red.
- 5. Contrary to statements made in the briefs of both plaintiffs and defendants, Town and King-Greeley are not one and the same. King-Greeley is an Improvement District duly organized and existing pursuant to Article 12-A of the New York Town Law. It has no legal power or authority to enact or modify the Town's zoning ordinance.

- settled portion of the hamlet of Chappaqua. It is approximately me square mile in size and is zoned for 1/4 acre and 1/2 acre housing as well as business uses. Much of the housing in King-Greeley is on less than 1/4 acre having been built prior to the enactment of the Town's Zoning Ordinance in 1930. There are more than 330 structures within King-Greeley, most of which are residences. In addition, there are four religious facilities, numerous businesses, the local public library, and two schools.
- 7. King-Greeley also contains some multi-family housing constructed prior to the 1930 enactment of the Town's Zoning Ordinance, including some two and three family houses and one building containing ten residential units.
- 8. By far the greater majority of the houses in King-Greeley are more than 30 years old. The majority of the residences in King-Greeley are occupied by persons of the lower and lower middle income ranges, although the district also contains some expensive residences. Many of the Town's municipal employees live in King-Greeley as well as Senior Citizens and other persons of low or lower middle income capacities.
- 9. King-Greeley can be characterized as densely populated. As noted in Item 6 of the Draft Environmental Clearance Worksheet (Pl. Ex. 1, Doc. 6):

"This project would be classified as a long-run program. The area is almost entirely saturated with homes on lot sizes less than required zoning. This indicates, in itself, that there is little room for new building and expansion."

Greeley of federal funds to construct its sewer system could somehow coerce King-Greeley into modifying its zoning is fallacious.

First, as noted above, King-Greeley has no authority with respect
to zoning. Second, the area is already "saturated" with residential
housing much of which was constructed prior to enactment of the present zoning ordinance on lots smaller than presently required.

THE KING-GREELEY SEWER PROJECT

- making for a very expensive sewer project. The total cost of sewer project was originally estimated at \$1,747,500, and the HUD grant amounts to \$358,300 (see Plf. Ex.l, Docs. 13,31). However, the present cost estimate for King-Greeley is \$2,100,000. It is anticipated that the federal aid contribution will reduce substantially the burden on the individual King-Greeley property owners. By calculating principal and interest costs, if such aid is not given, each property owner will be compelled to pay approximately 25% more per annum for this sewer facility.
- 12. The King-Greeley Sewer Project has been under consideration for approximately 10 years. King-Greeley, being the older more settled portion of the hamlet of Chappaqua, has largely inadequate septic fields and septic tank disposal systems. Because of the rocky terrain, the soils are unable to absorb additional wastes.
- 13. Numerous residences have suffered extensive septic failures over the years. As stated in King-Greeley's application for federal funding:

"The area served is a high density zoned area basically completely saturated with residential establishments, business enterprises and public buildings, churches,

- 47a-

libraries, schools, etc. The majority of residential facilities are 40 to 50 years of age and older. The present sewage disposal systems comprise (sic) of faulty cesspools and septic systems on over-saturated lands of small size with no room for expansion. The faulty systems are causing spillage of raw sewage over land and creating a public nuisance and serious potential health problem for the area and entire Town." (Plf. Ex. 1, Doc.13).

- Westchester, Department of Health, have found numerous septic failures over the years. Parts of King-Greeley have experienced seepage from the septic systems which found its way into the streets and into the storm drainage system. It is imperative that the public health hazard which now exists be eliminated by means of the new sewer system.
- County Department of Health, Westchester County Department of Planning and the New York State Department of Environmental Conservation (Plf. Ex. 1, Doc. 31, p. 2). Annexed as Exhibits B and C are copies of the letters of the Westchester County agencies reproduced from the defendants' administrative file produced for inspection in this action. In recommending approval of the project, each agency emphasized, among other things, the densely populated character of King-Greeley, the age of the residential failities, the history of sewer system failures, and the necessity of a permanent solution to this sanitation problem.
- 16. The sewer project will service all properties within King-Greeley including those currently used as multi-family
 residences.

- against Black and Spanish speaking people and against people of low and moderate income, I note, is not supported by any hard evidence before the Court. Even more important such a claim is contrary to fact. Housing within King-Greeley covers the range of economic cost, but small, older homes inhabited by working class and lower middle class people are predominant. All of the real estate brokers serving the area have been active in, and are pledged to promote open housing for all groups of people. There has been no effort to discriminate in sales or rental of housing in King-Greeley.
- 18. The sewer facility is sufficient in size to handle the existing King-Greeley buildings as well as any new construction which might subsequently be built in King-Greeley including multifamily residential units and substantial business development.

 King-Greeley will be connected to the Saw Mill River Trunk Sewer operated by the County of Westchester which carries untreated sewage to the Yonkers Joint Sewage Treatment Plant. The proposed sewer system is adequate to service possible future growth in King-Greeley (see Plf. Ex. 1, Doc.22).
- or property from use and benefit of the sewer system on the basis of race, creed, religion, income, or other discriminatory basis. The argument made by plaintiffs that the proposed sewer system will adversely inhibit or somehow affect the future construction of multi-family housing in King-Greeley is absolutely wrong. Aside from the fact that there is very little land in King-Greeley available for such construction, the design of the

proposed sewer project as noted above is adequate to service such future construction. King-Greeley itself is already a high density development area and consequently cannot in any way be said to lock in low density housing in the Town. Compelling the residents of King-Greeley to retain their present aged and deteriorating septic tank systems and continuation of the presently existing public health hazard is certainly neither a realistic nor sensible method to encourage the development of additional multi-family housing units in King-Greeley even assuming such development is necessary and appropriate.

20. At a meeting of the Town Board of New Castle, on March 28, 1972, I offered a motion, which was unanimously approved by all members of the Council, authorizing then Supervisor George F. Oettinger to execute and file "an assurance of compliance with the Department regulations under Title VI of the Civil Rights Act of 1964." (Plf. Ex. 1, Doc. 15). This Assurance of Compliance was executed on April 26, 1972 (Plf. Ex. 1, Doc. 13). Under its terms, King-Greeley, among other things, agreed:

"[I]t will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352 and all requirements imposed by or pursuant to the Regulations of the Department of Housing and Urban Development (24 CFR, Subtitle A, Part I) issued pursuant to that Title, to the end that, in accordance with Title VI of the Act and the Regulations, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department of Housing and Urban Development, and HEREBY GIVES ASSURANCE that it will immediately take any measures necessary to effectuate this agreement." (Emphasis Added)

(A copy of this Assurance of Compliance is annexed as Exhibit).

King-Greeley has fully complied with its agreement. Indeed, plaintiffs in this lawsuit make no claim that use and benefit of the proposed sewer system is being withheld from King-Greeley residents on some discriminatory basis. The sewer is intended and will service all people in King-Greeley regardless of race, color or national origin.

21. Plaintiffs argue that the "financial need" sections of the HUD rating sheet are erroneous. I emphatically disagree with this conclusion based as it is on assumptions and irrelevant underlying data. Plaintiffs base their argument on census figures referring to the median income for the Town. Yet, such income figures have no relevancy to King-Greeley. Although even the Town is not in possession of exact median income figures for King-Greeley, it is clear and evident from an inspection of the area itself that the median income in King-Greeley is considerably lower than that of the entire Town. Moreover, my personal familiarity with many of the residents of this small area, a number of whom are employees of the Town and retired senior citizens, leads me to conclude that median income of King-Greeley residents must be substantially lower than that of the Town as a whole. The substantial increased burden which would have to be assumed by these people if the grant is not made, may have the effect of driving out of the area some of the lower income residents who now reside there. In this connection, I note that Mr. Joseph Herman, the HUD official who originally prepared the financial need section was not available to testify at pre-trial deposition due to a stroke (see plaintiff's supplemental memorandum, p.12, defendants' memorandum in opposition to plaintiffs' request for a permanent injunction, p.9). Accordingly, plaintiffs have been unable to demonstrate the underlying considerations which led

to his rating of the financial need section. An after-the-fact analysis by Susan Alem (see plaintiffs' supplemental memorandum, p.22) and her "disagreement" with the rating of Mr. Herman (based not on a review of the information and facts upon which the original rating was made but upon irrelevant statistics applicable to the Town not to King-Greeley) does not begin to demonstrate that the initial HUD rating of the sewer project was erroneous.

22. It must not be overlooked that the HUD grant was reviewed anew when Suburban Action wrote its letter of complaint, and HUD acting upon advice of its General Counsel determined there was "no sound legal basis for cancellation of the contract with the Sewer District." (Plf. Ex. 1, Doc. 39).

PRESERVATION OF TURNER SWAMP

- 23. The Turner Swamp was acquired from the Estate of Turner and from J. Bain Turner and his wife. Simultaneously, the Town acquired the adjacent Kipp Street School property from the local Board of Education. The property, approximately 38 acres in all, inclusive of the Kipp Street School, lies approximately one mile from the hamlet of Chappaqua and is surrounded by residential development. It is largely a bog or marsh area which drains approximately 250 surrounding acres. In addition to its drainage function it also serves as a natural wildlife preserve. The purposes served by this project are public health and safety as well as environmental, recreational and educational.
- 24. Plaintiffs do not claim that the Town is developing the Turner Swamp as a recreational and park facility in order to

prevent the construction of multi-family housing on the site.

Indeed, it is clear that the proposed park project has nothing whatever to do with housing and plaintiffs' invocation of the statutes cited in their complaint is misplaced.

- 25. The Turner Swamp property, although perhaps possible of development, is basically unsuitable for that purpose because of its boggy, marshy characteristics and because it presently serves as a drainage area for the surrounding acreage. Development of Turner Swamp would seriously increase drainage problems in the hamlet of Chappaqua creating possible dangers of flooding.
- erations sharply favor preservation of Turner Swamp. It was one of the last remaining wetlands under private ownership and its acquisition by the Town was vital to the Town's future development insofar as wildlife and recreation purposes are concerned. The area is highly suitable for use as a managed wildlife area where a varied wildlife population already exists and needs only be encouraged. It is also contemplated that the area be used by school children for nature studies.
- June 22, 1972 (a copy is annexed as Exhibit E). Under its terms, the Town obligated itself to abide by the terms of Title VI of the Civil Rights Act of 1964 and all regulations and requirements of the Department of Interior, and not to deny any person the benefits of the project on the ground of race, color or national origin.

28. The Town has fully complied with its agreement.

Admittance to the proposed recreational facility will be open
to all -- resident and non-resident alike -- regardless of race,
color, national origin, income, or language. Indeed, plaintiffs
at bar do not claim otherwise.

THE U.D.C. CONTROVERSY

- 29. Plaintiffs make much of what they term the Town's opposition to the Urban Development Corporation's plans to construct multi-family housing in the Town. Presumably this point is stressed to create the impression that the Town has engaged in formal, concerted and perhaps illegal acts to keep out low and moderate multi-family housing. Nothing could be further from the truth, and the misleading references made by plaintiffs in this lawsuit should be disregarded.
- of the State of New York to permit local municipalities free choice as to the housing within their borders is demonstrated anew by Ch. 46 of the Laws of 1973 (eff. June 5, 1973), which deprived the Urban Development Corporation of the powers previously conferred by Ch. 174 of the Laws of 1968 to ignore and override local zoning ordinances and to construct multi-family and other housing of a type, bulk and density prohibited by the community in towns and villages.
- 31. In his message to the legislature on approving this bill, the Governor stated, in part:

"The bill bars the Urban Development Corporation from affirming a plan for a residential project to be located in a town or incorporated village if the local governing body of such town or village files with the Corporation formal written objections to the project within 30 days after the public hearing held on the project or within 30 days after June 30, 1973, whichever is the later. * * *

"The impact of this bill will be to channel the UDC's residential activities into the cities where its powers and abilities will not be affected, and into towns and villages whose governing bodies do not formally oppose a UDC residential project. Except to the extent that towns and incorporated villages are empowered to prevent UDC from affirming plans for residential projects, UDC's existing authority to waive compliance with local zoning and other local laws and regulations will be unimpaired." (McKinney's Session Laws, June 25, 1973, No.8, pg. A-276).

Against this legislative background, I turn now to the facts.

- of the statutory power of U.D.C. to override local zoning ordinances, U.D.C.'s Westchester subsidiary proposed a so-called "Nine Town's Plan." The Town was one of the nine towns that was to receive an urban development project for approximately loo units. The proposal was advanced without consultation with residents and officials of the Town who, to all intents and purposes, learned about it when they read the front page of the New York Times.
- of discussion and interest in the Town with various points of agreement and disagreement being advanced. Opposition to U.D.C. was focused not so much on the proposed construction of 100 units of multi-family housing, but on U.D.C.'s power to override local

zoning and building codes thereby effectively removing from the residents and their elected representatives the decision-making authority regarding their own community. As noted above, it was this controversial power that was removed by the State Legislature.

- 34. Following its initial proposal, it is important to recognize that U.D.C. never took any steps whatsoever to implement its proposal for the Town, including the holding of the required statutory hearings and other proceedings.
- 35. Accordingly, the Town's alleged "opposition" to U.D.C. was never directed and was never formal. It took the form of certain individuals expressing their points of view opposing generally the powers of the U.D.C. to override local zoning and building codes. However, at no time has the Town ever indicated unwillingness to accept low or moderate income housing on a non-discriminatory basis.

BACKGROUND OF PLAINTIFFS' COMPLAINT

- 36. Various persons associated with Suburban Action, the real plaintiff in this action, have from time to time expressed opposition to the existing zoning ordinance in the Town and indicated that a court action challenging the zoning was being considered. No such action was commenced by Suburban Action.
- 37. Instead, upon learning of the approval of the two federal grants, Suburban Action sought to pressure the governmental agencies into changing their decision. By letter dated

January 18, 1973, Suburban Action wrote a seven-page letter of complaint to HUD and to Tri-State Regional Planning Commission outlining their legal theories and objections to the federal grants. This letter was never sent to the Town, although a copy subsequently came into possession of then Supervisor George F. Oettinger. Supervisor Oettinger responded point by point to Suburban Action's letter in his own letter to Senator Jacob Javits dated January 22, 1973. (A copy of Supervisor Oettinger's letter is annexed as Ex. F).

- 38. Supervisor Oettinger's letter in many ways confirms my testimony in this affidavit.
 - (a) He attempts to correct the erroneous assumption that the Town rather than the King-Greeley had applied for the federal sewer grant.

- (b) He points out the low and moderate income of the persons residing in King-Greeley and the high population density of that one square mile area.
- (c) He refers to information received from the engineering firm of Charles H. Sells, Inc. concerning the design of the sewer system and its capability of servicing the possible introduction of multi-family housing on a moderate scale.
- (d) He emphasizes that King-Greeley has no way of influencing the Town's zoning policies

and notes that the adversely affected people are King-Greeley's "predominantly low and middle income homeowners and not the 'disproportionately wealthy' which the letter states are the only persons who 'can afford to live in New Castle.'"

39. Supervisor Oettinger's letter concluded:

"If Mr. Gold and Mr. Davidoff are sincere, they could mount a legal attack against our Zoning Ordinance."

This invitation to challenge the Town's zoning ordinance was refused. Instead, Suburban Action commenced the instant action without even joining the Town and King-Greeley as parties defendant with the apparent hope that unsupported cries of discriminatory zoning practices rather than hard facts and legal analysis would cause the governmental defendants to reconsider and cut off federal funds to two projects which have little if anything to do with housing and which concededly do not embody discriminatory or exclusionary practices.

THE TOWN'S ZONING

- 40. The complaint before this Court does not challenge the legal validity of the Town's zoning ordinance and plaintiffs have presented no evidence to establish that the zoning ordinance is arbitrary, unreasonable and beyond the police power of the Town.
- 41. Until Suburban Action commences an appropriate lawsuit challenging the Town's zoning ordinance and obtains an

unprecedented judgment declaring such ordinance illegal, its validity must be presumed.

- 42. The annexed zoning map of the Town (Ex. A) shows the permitted uses of various areas of the Town. This includes areas zoned for residential use on lots ranging in size from 1,4 acre to 2 acres, various business uses, and planned and general industrial uses. In addition, as discussed above, particularly with respect to King-Greeley, construction prior to the enactment of the zoning ordinance has resulted in the existence of homes on smaller size lots and also some multi-family housing.
- 43. In 1968, the Town caused to be prepared a Town Plan of Development. Federick P. Clark & Associates, well known and respected planning consultants of Rye, New York were retained for this purpose. This is the same type of report as is sometimes designated a master plan or comprehensive master plan report.
- 44. This Town Plan was the subject of numerous public meetings and was adopted by both the Planning Board and the Town Board as a guide to the development of the Town. It served as a guideline for the current 1971 zoning ordinance and the annexed official zoning map.
- 45. Thereafter, the Town budgeted monies to have a multi-family housing study made by its Planning Board and planning consultants, Frederick P. Clark & Associates. This report constituted the first phase in the planning study of multi-family housing then currently being conducted by the Town Planning Board. The purpose of this phase of the work was to study the

general policy question of whether the Town needed and should permit the development of multi-family housing in the Town. This report consisted of background information concerning the estimated demand for housing in and around the Town, the supply of housing in and around the Town, and data regarding the characteristics of multi-family housing.

- 46. This report was to be followed by Phase 2 of the study consisting of an analysis of the Town's physical capacity to support multi-family housing, including an evaluation of potential sites for such housing, recommended zoning standards and other controls to help assure the proper development of such housing, and a description of the various means by which such a program could be implemented.
- 47. The "Multi-Family Housing Study, 1", consisting of some 45 pages, 13 tables, 3 maps and 6 charts, was finished in August 1971 and copies were furnished not only to all members of the Planning Board and the Town Board but to all civic associations and other local organizations, with a number of copies placed on file in the public library and in the office of the Town Clerk so that as many people as possible could have the opportunity to become acquainted with it and its contents. In addition, some meetings had been held by the consultants during its preparation, with local groups to present the results of these studies and, after circulation of the report, additional discussion meetings were held.

- 60a -

- 48. The study itself indicated that while a considerable number of persons working within the Town lived in surrounding communities, a survey among persons employed by Reader's Digest showed that only 20 persons (17%) of those answering stated they were non-residents who would like to move to the Town, and of these 20, only 3 had a total annual household income of less than \$10,000.
- 49. There is very little industry in the Town and that which is there is not of any type which utilizes great numbers of low-paid workers. There is, therefore, almost no in-migration of industrial workers.
- 50. The study is presently being continued and may form the basis for amendment to the Town's Development Plan and zoning ordinance so as to provide, if deemed necessary and appropriate, some additional units of multi-family housing.
- 51. I have discussed the foregoing background facts, simply to apprise this Court of the study and analysis underlying the current zoning ordinance and to demonstrate that the subject of the need and suitability of adding units of multifamily housing is a matter being given active consideration by the residents of the Town and its elected officials. I respectfully submit, however, that the zoning of property in the Town and the land uses to be permitted on such property are a matter

for the elected legislative body, i.e., the Town Board of the Town of New Castle, to determine. This federal court should not inject itself into a local zoning dispute particularly in the instant case where the complaint does not seek a judicial determination of the invalidity of the zoning ordinance or even name the Town as a party defendant, and, concededly, plaintiffs are neither property owners in the Town who have been injured by the zoning ordinance or individuals who have in some direct and immediate manner sustained specific injury.

RICHARD E. BURNS

Sworn to before me this day of April, 1974.

Notary Public

ROBERT S. GOODMAN
Notary Public, State of New York
No. 41-1605475
Qualified in Queens County
Commission Expires March 30, 1975

RACHEL EVANS, STEVEN R. KIDD, FERNELL PATTERSON and WALTER B. BROOKS, JR., on behalf of themselves and all others similarly situated,

Plaintiffs,

-against-

JAMES T. LYNN, Secretary, Department of Housing and Urban Development, et al.,

Defendants,

-against-

TOWN OF NEW CASTLE and KING GREELEY SEWER DISTRICT,

Defendants-Intervenors. :

DEFENDANTS-INTERVENORS AFFIDAVIT

73 Civil 3475

STATE OF NEW YORK)

: SS. :

COUNTY OF NEW YORK)

ARTHUR M. HANDLER, being duly sworn, deposes and says:

:

1. I am a member of the firm of Golenbock and Barell, attorneys for defendants-intervenors, Town of New Castle ("Town") and King Greeley Sewer District ("King-Greeley") and submit this affidavit (a) in support of defendants' motion to dismiss the complaint pursuant to Rule 12(b)(1) and (6) for lack of subject matter jurisdiction and failure to state a claim and upon the further grounds that plaintiff lacks standing to sue and fails to present a case and controversy; (b) in opposition to plaintiff's motion for preliminary injunction; and (c) in opposition to plaintiff's motion for class action determination.

-63a -

- 2. On behalf of the Town and King-Greeley, I applied to this Court, by letter dated March 9, 1974, for leave to intervene pursuant to Rule 24 of the Federal Rules of Civil Procedure. (A copy of this letter is annexed as Exhibit G). The application was granted. With respect to defendants-intervenors' request to take depositions of plaintiffs, the Court instructed counsel to proceed expeditiously with such depositions and, if possible, to stipulate to the relevant facts if that would obviate the necessity for deposing all of the plaintiffs.
- 3. On March 25, 1974, defendants-intervenors conducted the oral deposition of plaintiff Rachel Evans, pursuant to notice dated and served March 13, 1974. Rachel Evans was chosen as the initial plaintiff to be deposed because she had verified the complaint, and is the only plaintiff alleged to be unemployed and whose "low income is exclusively derived from public assistance." (Compl., par. 3). Thereafter, counsel for plaintiffs and defendants-intervenors prepared and executed a stipulation of facts dated April 5, 1974. This stipulation is annexed as Exhibit H.
- 4. The transcript of the Evans deposition accompanies these papers for filing with the Court.* Her testimony sharply contradicts the allegations of the complaint and together with the stipulation of facts establishes plaintiffs' lack of standing and the absence of a justiciable controversy.
 - 5. The verified complaint seeks to portray plaintiff

^{*}Mrs. Evans attorney requested that I waive the requirement of signing the transcript by Mrs. Evans and I so agreed.

Evans as residing in "a deteriorated building slated for demolition in the near future" and as "not able to find decent housing" (Compl., par. 3) and alleges that plaintiffs and others (i.e., "black and Spanish-speaking persons and all other persons of low income") would be deprived of the benefits of the federally funded sewer project and park project. (Compl., pars. 21, 23). The facts as established by the Evans deposition and stipulation of facts are quite different.

- (a) Mrs. Evans' sworn testimony establishes that since September, 1973, she resides in what she herself acknowleges to be "decent housing" (Tr. 43). Her home is a 6-room apartment with 1 1/2 baths in a public housing development given her by the Housing Authority. (Tr. 3, 9, 12-13). Her neighbors are people of all races (Tr. 44). Her residence is not scheduled for demolition, and she presently intends to continue residing there (Tr. 18, 21). Mrs. Evans is not now looking for housing and has no intention of seeking new housing while residing at her present residence. She is satisfied with her present apartment -- "the space is fine". (Tr. 27, 43).
- (b) Her home is within walking distance of a park, which is accessible to her children (Tr. 21, 27). Mrs. Evans has no problem with her sewage system (Tr. 30-31).
- (c) Prior to and since moving to her present apartment, Mrs. Evans made no efforts to find decent housing for herself and her children in areas outside Peekskill (28, 29, 44), and made no effort to secure housing anywhere in the Town (32). She does not know the area known as King-Greeley (Tr. 31-32), and, although she has heard of Turner Swamp, does not know where

it is in the Town and whether she has ever been to it (32).

- (d) Mrs. Evans has been receiving public assistance for 18 years; she presently receives \$449 per month, including her rent from the Department of Social Services (Tr. 15, 16, 17). She has no other income (Tr. 15). She was trained as a Nurse's Aid 9 years ago under the Manpower Training Act, but has not worked since receiving training (Tr. 40, 41). A job offer from the Grasslands Hospital in Valhalla was rejected because she had no means of transportation and did not wish to move from Peekskill (Tr. 41-43). There is a hospital in Peekskill but Mrs. Evans never sought a job there (Tr. 43).
- (e) In explaining the allegations of her verified complaint that she is denied an opportunity to share in the benefits extended to the Town, Mrs. Evans conceded that she could not participate in the benefit of any sewer system other than the one which served her residence (Tr. 34-36), and that even residence in the Town would not assure her of use and benefit of the sewer system at bar, if she did not actually reside in King-Greeley (Tr. 36).
- (f) With respect to her allegations of injury flowing from the proposed preservation of the wetlands of Turner Swamp, Mrs. Evans acknowledged that she did not claim that members of the public, who were not residents of the Town, would be denied admittance. Not did she have reason to believe that if she had transportation to get to the park, she would be denied admittance (Tr. 37). Her claim of lack of opportunity to enjoy the proposed park of Turner Swamp (Compl. par. 23) is based on

the fact that she does not have a car (Tr. 37), and even with transportation, such facilities are inaccessible "because from where I live its' completely out of my way" (Tr. 40). Significantly, Mrs. Evans conceded that she would regard the park as inaccessible even if she lived in the Town if it was not within walking distance. (Tr. 40).

6. In short, Mrs. Evans does not claim that she desires, has sought or has been denied the use and benefit of the proposed sewer and park project challenged in this suit. The basis of her complaint is best explained by her own testimony:

"I have the understanding that these grants are issued to benefit the poor communities, the communities that really need these facilities." *** From what I have seen of New Castle, it is not a poor community at all. That's my objection, not New Castle, just because of the name New Castle, but I would object just as strongly if it was any other rich area in any other town." (Tr. 52-53).

The truth of this lawsuit is thus laid bare. It is nothing more than a personal proclamation of a political and sociological point of view -- should federal funds be restricted to poor communities? Should income level of the community be the sole test administered in the making of federal grants? Whatever the answer to these difficult questions and whatever one's point of view, it is clear that such determinations are for the legislative and executive branches of the government and not for this Court. Moreover, Rachel Evans not having sustained a direct and immediate injury by reason of the governmental conduct she seeks to challenge in this action lacks the requisite legal standing to prosecute this action and has failed to present a justiciable controversy.

- 7. To confirm that the other named plaintiffs are in substantially the same deficient legal position, the attention of the Court is respectfully directed to the annexed stipulation of facts (Exhibit H). The stipulation establishes that none of the plaintiffs have any legal interest in the federal grants at bar or have sustained any actual or threatened injury by reason of the challenged governmental conduct. The stipulation, among other things, establishes:
- (a) None of the named plaintiffs has sought housing in the Town (par. 1);
- (b) None of the named plaintiffs or any political sub-division in which they reside applied for or was deprived of the federal funds granted to the Town and King-Greeley (par. 2); and
- (c) Plaintiffs do not claim that the sewer and park projects will be operated on a discriminatory basis, and that the benefits of the projects will be denied to persons on the basis of race, creed, color or income (pars. 3, 4, 5).
- 8. Defendants-intervenors submit that this Court, in accordance with the authorities discussed in the accompanying memorandum, is required to dismiss the complaint for lack of standing and failure to present a justiciable controversy. Such adverse threshhold jurisdictional determination should make it unnecessary for this Court to determine the conflicting facts set forth in the various affidavits, exhibits and depositions heretofore filed by the parties. However, if this Court deems it appropriate to proceed to the merits of plaintiffs' claim, it is respectfully submitted that plaintiffs' motion for preliminary

injunction cannot be granted absent a full evidentiary hearing. E.g., Dopp v. Franklin National Bank, 461 F.2d 873, 879 (2d Cir. 1972); Securities and Exchange Commission v. Frank, 338 F.2d 486 (2d Cir. 1968); see generally 7 Moore, Federal Practice 165.04[3] (1974). Such hearing is particularly required in the instant case because defendants-intervenors have not had an opportunity to attend and cross-examine at the various depositions conducted by plaintiffs, and to object to the admissibility of the documents plaintiffs obtained from the government's administrative files which are presently before this Court. The oral argument of counsel for plaintiffs and defendants on October 19, 1973, was not in the nature of an evidentiary hearing and does not satisfy the requirements of Rule 65 of the Federal Rules of Civil Procedure.

ARTHUR M. HANDLER

Sworn to before me this

15th

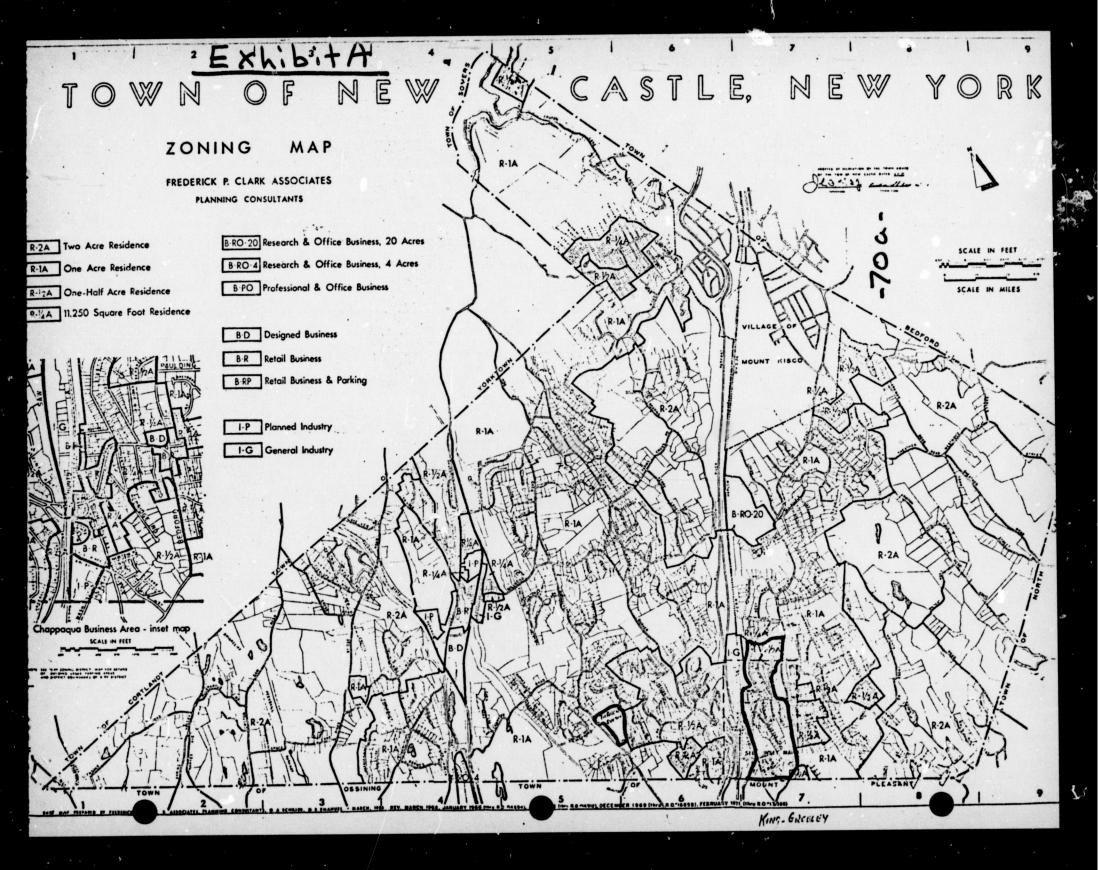
day of April, 1974.

Notary Public

ROBERT S. GOODMAN Notary Public, State of New York

No. 41-1605475 Qualified In Queens County

Commission Expires March 30, 1975



WESTCHESTER COUNTY , LANNING BOARD

Exhibit

EDWAL. CHAIRHAN

P. M. FREEMAN EDWARD M. GIBBS J. DOYD HERSON

WARREN T. LINDQUIST

RODERT A. DENNISON COMMS. OF PUBLIC WORKS YOUKERA

CROTORD

PECKSKILL

WHITE PLAINS

NORTH CASTLE

VICE -HAIRMAN

N. CASSELLA, JR.

EDWARD J. MORTOLA NEW MOCHELLE BERTRAN F. WALLACE HASTINGS-ON-HUDSON

MRS. THOMAS M. WALLER CHARLES E. POUND EX C: " 510 COMMR. OF PARKS, RECREATION & CONSERVA

WILLIAM G. BORSHARD COMME. OF ENVIRONMENTAL FACILITIES

COUNTY DEPARTMENT

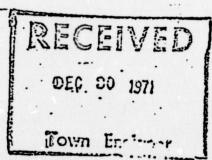
POTENZA, A.I.P. DEPUTY CONHISSICNER :910 COUNTY OFFICE BUILDING

WHITE PLAINS, N. Y. 10601 . 914 WHITE PLAINS 9

December 28, 1971

Mr. Oscar R. Soyland, P.E. New Castle Town Engineer Town Hall 200 South Greeley 'venue Chappaqua, New Yor, 10514

Dear Mr. Soyland:



At your request, the Westchester County Department of Planning has .reviewed the proposed King-Greeley Sewer District in the Town of New . Castle in the hamlet of Chappaqua, and is pleased to submit to you this letter giving our evaluation of its priority.

We find that this proposed sewer district, which will be funded in part by Federal aid from the Department of Housing and Urban Development, is a local sewer improvement of the highest priority, and one which should .rcccive every favorable consideration for Federal aid. The proposed sever service area is in a location identified on the Urban Form Map of the Westchester County Department of Planning, which constitutes the county-wide Land use planning element under HUD certification procedures, as "high density" urban, and the extension of sewer service into this area is therefore fully consistent with our county-wide land use element recommendations.

The area into which the sewer is proposed to be extended is almost entirely develope with existing residential and business uses. The pattern of development in this area is firmly established, and the extension. of sewers into the service area will greatly improve the invironmental and public health aspects of this central area of your town. T like many areas of northern Westchester the establishment of sewers in the King-Greely -Camer District area will not alter, or offer the opportunity to alter, the range of densities pro osed for residential development, since the area is already substantially developed with single-family homes that are of good quality and have a considerable period of useful life remaining. The proposed extension of the sower service into this area will, however, alleviate a worsening situation of dependence upon individual septic tanks for . the disposal of sanitary wastes, a very desirable aspect.

December 28, 1971 Mr. Oscar R. Soyland, P.E. Page 2 New Castle Town Engineer We fully endorse your application for the proposed extension of the sewer district, and consider it to be one of the highest priority projects of its type in Westchester County. We believe it warrants full .Federal support in terms of financial aid, and we will be pleased to give you any further assistance in obtaining such aid that you may require. Very truly yours, City Q. Eachwile Peter Q. Eschweiler Commissioner

COUNTY COARD OF HEALTH

DEPARTMENT OF HEALTH

County Office Building

White Plains, N. Y. 10601

November 22, 1971

JACK J. GOLDMAN, M.D.

Exhibite NOV 24 1971

.cont

R. BRADLEE HOAL
A PR H. DIEBRICK, M.D.
LODIS A. BRUSS
RS. GRACE S. HALLOCK
LOUIS P. KURTIS
HOHN J. VESCE, M.D.
LOWARD WILLIAMS

AMES M. JOHES, M.D., PRES.

ELIFFORD T. WEIHMAN, VICE PRES. IRS. JOHN T. PENJAMIN, JR.

> Mr. John F. Reed, Jr., Supervisor Town of New Castle Town Hall 200 So. Greeley Avenue Chappaque, N. Y. 10514

> > Re: King-Greeley Sewer District New Castle (T)

Dear Supervisor Reed:

Reference is made to your letter of October 1, 1971 relative to the proposed design and construction of a sanitary sewer system to serve the King-Greeley Sewer District.

Information submitted with your letter has been reviewed in light of the need for such public sanitary sewers in the subject area.

It is noted that the area under consideration is generally zoned for 1/k and 1/2 acre properties; many of which contain residences at least 10-15 years old, or older.

A review of the records of the Westchester County Department of Health for the past 10 years shows an increasing number of investigations of suspected and confirmed separate sewerage system failures in this area.

Since the life of a properly designed and constructed separate sewerage disposal system is taken as 15-20 years, with proper maintenance it can be expected that the number of failures of systems in the area will increase in the future.

Provision of a public sanitary sewerage system, to replace separate sewerage disposal facilities, can provide, in addition to other benefits, better and more reliable demestic waste disposal facilities and elimination of the nuisance and health hazard conditions that can be created by malfunctioning separate sewerage systems.

The King-Greeley Sewer District is tributary to the Saw Mill River Trunk Sewer operated by the County of Westchester, which carries untreated sewage to the Yonkers Joint Sewage Treatment Plant. Site work preliminary to enlargement and upgrading of this facility to provide for secondary treatment of sewage is currently underway.

The proposal is in accordance with the Comprehensive Plan for Sewerage Facilities for Westchester County.

In light of the above, the Westchester County Department of Health strongly supports the proposal of the Town of New Castle to provide public sanitary sewers in the King-Greeley Sewer District; subject to compliance with the provisions of Article 12 of the Public Realth Law, and other applicable rules and regulations.

. Very truly yours,

Jack Goldman, M.D.

.Commissioners of Health .

JG:rr

cc: W. Schlickenreider, MYSDEC

.O. Soyland, P.E.

White Plains Regional Office, NYSDER

W. Borghard, P.E., WCDEF

· C. Weber, P.E.

Peekskill Field Office

112 61 : Im. 47:-·:. v:: *. 444. *

New York State Department of Environmental Conservation Henry L. Diam # ; Commissioner A:2354 H Y 12201 ·February 3, 1972 =xh.bit Mr. Oscar Soyland, Town Engineer Town of New Castle Chapaqua, New York 10514 Town Engineer Dear Mr. Soyland: It was nice talking to you on February 2, 1972, and I can understand the confusion concerning the various Housing and Urban Development (HUD) and Environmental Protection Agency (EPA) requirements. Rules and Regulations published in the Federal Register on July 2, 1970, and subsequent letters of agreement between HUD and EPA require that all sewer projects be covered by appropriate Interim Metropolitan and Basin Plans. To meet this requirement, the New York State Department of Environmental Conservation has been developing the necessary plans to insure that municipalities in New York State remain eligible for EPA and HUD grants. The King-Greeley Sanitary Sewer District project was covered in the following plans: Metropolitan Plan for Water Pollution Abatement - Tri-State Region. The Westchester County Comprehensive Sewerage Study (WPC-CS 173) was part of this plan and covered your project area. This plan was submitted to EPA in January 1971. They have yet to review the plan. 2. . The Interim Basin Plan for the Lower Hudson River Basin also covered your project area and was submitted to EPA in July 1971. EPA has yet

to review this plan.

The EPA and HUD metropolitan and basin planning requirements have therefore been met for your project area. By carbon copy of this letter we are reminding

both federal agencies of the plans that have already been submitted to their offices covering your project area.

Yours truly,

Michael J. O'Toole, Jr., P. E.

Chief, Sewerage Needs Section

Water Management Planning Unit

CC: Messrs. Witkowski (EPA), Vlaios (HUD), and Mt. Pleasant (DEC)

DEC - Region #3

-75a-

MOT-inm

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

ASSURANCE OF COMPLIANCE WITH DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT REGULATIONS UNDER TITLE VI OF THE CIVIL RIGHTS ACT CF 1964

KING-GREELEY SEWER DISTRICT (hereinafter called the (Name)

"Applicant") HEREBY AGREES THAT it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352 and all requirements imposed by or pursuant to the Regulations of the Department of Housing and Urban Development (24 CFR, Subtitle A, Part 1) issued pursuant to that Title, to the end that, in accordance with Title VI of the Act and the Regulations, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department of Housing and Urban Development, and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by the Department of Housing and Urban Development, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision or similar services or benefits. If any personal property is so provided, this assurance shall obligate the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by the Department of Housing and Urban Development.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal loans, advances, grants, properties, contracts or other Federal financial assistance extended after the date hereof to the Applicant by the Department of Housing and Urban Development, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Applicant.

Dated April 26, 1972

Town Hall
Town of New Castle

200 South Greeley Avenue

Chappagua, N. Y. 10514

(Applicant's Mailing Address)

King-Greeley Sewer District

(Applicant)
George F. Oettinger, Supervisor
Trustee - TOWN OF NEW CASTLE
BY
(Authorized Official)

-764-

215059-P

ASSURANCE OF COMPLIANCE
(TITLE VI., CIVIL PIGHTS ACT OF 1964)

Town of Now Castlo

(hereinafter called "Applicant-Recipient")

(Name of Applicant Recipient)

HEREBY AGREES THAT IT will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-152) and all requirements imposed by or pursuant to the Department of the Interior Regulation (44 CIR 17) 150-151 pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, or national origin he excluded from parts to tion in, be denied the benefits of, or he otherwise subjected to discrimination under any program or a tion for which the Applicant-Recipient receives financial assistance from Purpau of Cutdoor Recreation and

Bureau or Office

Hereby Gives Assurance That It will immediately take any measures to effectuate this agreement.

If any real property or structure thereon is rovided or improved with the aid of Federal financial assistance extended to the Applicant-Recipient by Bueau of Cutdocr Recreation. This assurance obligates the Buteau or Office

Bureau or Office

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants. loans, contracts, property discounts or other Federal financial assistance extended after the date hereof to the Applicant-Recipient by the bureau or office, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Applicant-Recipient recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall reserve the right to seek judical enforcement of this assurance. This assurance is binding on the Applicant-Recipient, its successors, transferees, and assignces, and the person or persons whose signature appear below are authorized to sign the assurance on behalf of the Applicant-Recipient.

June 22, 1972

Total of New Castle
APPLICANT RECIPIENT

To the same of the season of the season

New York 10514

APPLICANT PECIFICNES MAILING ADDRESS -77.4 -

Honorable Jacob K. Javies
United States Synates
Washington, D. C. 20510

Daar Senator Javita:

Enclosed please find a copy of the seven page latter from Suburban Action Institute to Er. S. William Green of the Department of Newsing and Urban Ecvolomant and Er. Douglas Council, of Tri-State Regional Planning Counission, and a copy of my letter to the press.

The Town of How Castle has never raceived a copy of the letter from Suburban Action Institute.

The Town of New Castla received approval in 1972 for \$350,000.00 in Pederal Funds for the construction of the King-Freeley Sour District, which was in the works four years prior to by election to office. The high density (1/4 acre and line), preponderance of rock and accept slopes, has resulted in the ceptic systems in this area of Chappagua reaching a point of over-enturation. As a result, the criticant has been rising to the surface of the soil, thus creating a definite health problem. Freeless to say, thousands of collars have been resulted on engineering attribute and plane, the necessary acquiring of cosenants and other administrative expenses which should culminate in the beginning of construction the Spring of this year.

To attempt to harass and intimidate the residents of New Castle in this manner is unworthy of Mr. Davidoff and Mr. Gold. The Mew Castle Soning Ordinance was adopted in 1928 (probably.

before Mr. Davidoff was born,) and has been up-dated at periodic intervals. The Torm Davelopment Plan was adopted in 1938 and up-dated in 1968. Enving served on the Planning Board for five years I know first hand of the dedication of our leyel citingue who have assisted in directing the growth of this Town. We also retain. Frederick P. Clark Associates, Professional Planners, of Eye, New York, who make the necessary studies and recommendations prior to all soning and planning decisions.

The Town Board did, in fact, appoint a Citizens Advisory Committee on U. D. C. I have no knowledge whatseever of a Minister making a proposal for U. D. C. to prepare plans for some low or moderate income housing. The truth of the matter is that we learned (through the grapevine) that U. D. C. had taken an option on ten acres and was preparing plans for its development without discussing the proposal with the Planning Board, or the Mown Board. At this point the Town Board appointed a Citizens Advisory Consistee, which, after consultation with Westchester State Lagislators and Congressmen, resulted in proposed Legislation in both Albany and Washington.

To state that the Readers Digest is already the home of one major employer is extremely misleading. The Readers Digest is the colly-major employer. They have been located in Town since the 1930's and have grown with the Town. They rely on New Costle as well as surrounding communities for labor and do not have a problem in recruiting personnel. Hany of the employees in this administrative office are single or a second family income. It may is terest you to know that a 1970 survey showed that only 17% of the Readers Digest employees would care to live in New Costle, even if they had the opportunity.

I am advised by counsel that many wrong assumptions are made in the Suburban Action letter, which obviously can only result in erroneous conclusions. Paragraph I states that the Town of New Castle has applied for, and been granted Federal Funds. The fact is that the Town is not the applicant, rather the King-Greeley Sewer District, a benefit District organized under Article 12A of the Town Law is the applicant and the grantee of the Pederal Funds. Paragraph 2 states that the sewer, as

a moderate scale.

Gesigned, "will be adequate only if there is limited repulation growth." Obviously no housing policy of the Town of New Casele can be attributed to the Sewer District, which is a separate entity under the Town Law. In fact, the District can have no policy whatsoever in this area, since the Town Law mendates that the District include all persons to be benefited by the construction of the sewer, and that all such persons be included in the District. In point of fact, the District incorporates mostly homes of low and moderate income families, not to mention that it is an area of entremely high population density, as mentioned heretefore. The District's already high population concentration prevents such more growth. The office of Ches. H. Sells, Inc. informs so that they have designed the Sewer System to meet all foresceable growth in the District, including the possible introduction of multi-family housing on

The reference on Page 5 of the letter to the alleged "illegality" of the grant again incorrectly attributes the application and grant to the Town at large, rather than to the District. The suggestion on Page 6 that H. U. D. "could have conditioned approval of New Castle's Sewer Grant on the Town's agreement to permit low and moderate income housing," is absurd. The District has no way of influencing the Town's policies. The powns in this game are predominantly low and middle income homeowners and not the "dispreportionately wealthy" which the letter states are the only persons who "can afford to live in New Castle".

For the record, the King-Greeley Sewer District furnished the necessary materials and data attenting to the District's compliance with Title VI of the Civil Rights Act of 1964. The materials included H. U. D. Form 41001 (Assurance of Compliance with Dapartment of Housing & Urber Development Regulations under Title VI of the Civil Rights Act of 1964), a map showing the total geographical area of the project, marked to show areas of concentration of minerity group population and total number of inhabitants and minerity percentages therein. The form requires the applicant's assurance that minerity group population in the

Honorable Jacob K. Javits United States Senate January 22, 1973 Washington, D. C. 20510 District he serviced by the project on the same basis as nonminority repulation. As stated above, the District services the gratien repulation of the District, and is forbidden by law from refusing service to may immeditant of the District on eny bacin thatsoever. H. U. D. Form 41901 makes it clear that H. U. D.'s review of the data provided therein is related to the jurisdiction of the applicant, and not to data relating to the jurisdiction of some larger entity in which the applicant's territory may be located. If Mr. Cold and Dr. Davidoff are sincere, they should mount a legal attack against our Zoning Ordinance. I respectfully submit that they are being discriminatory in attempting to prevent the availability of much needed Federal Aid to the deserving tampayors in the King-Greeley Sewer District who are in desparate need of these sewers. These same tampayers ask for little in return for that tax money which has been funneled to Washington over many years. This is my dismediate reaction to the letter from Suburban Action. I shall be only too happy to meet with you or anyone on your staff to discuss this matter further and hopefully provide any necessary additional information. Sincerely, George F. Octtinger SUPERVISOR, TOWN OF MEW CASTLE GFO:CP cc: Hr. S. William Green Regional Administrator Mr. Dougles Carroll, Director Tri-State Regional Planning Comm. Town Attorney

ExhibitF March 9, 1974

Hon. Milton Pollack United States Court House Foley Square New York, New York

Re: Rachel Evans, et al. v. James T. Lynn, Secretary of Department of Housing and Urban Development, et al. 73 Civ. 3475 (MP)

Dear Judge Pollack:

I have been retained to represent the Town of New Castle and the King Greeley Sewer District in this action.

On behalf of my clients, I wish to intervene in this action, pursuant to Rule 24 of the Federal Rules of Civil Procedure, to participate in the action and defend against plaintiffs' challenge to the two federal grants which are the subject of this action.

"the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so transaction which is the subject of the action may as a practical situated that the disposition of the action may as a practical matter impair or incede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." Alternatively, intervention is permitted in the discretion of the Court under Rule 24(b)(2) "when an applicant's discretion of the Court under Rule 24(b)(2) "when an applicant's claim or defense and the main action have a question of law or fact in common."

It appears clear that my clients have a significant interest in the subject matter of this action in a real and

March 9, 1974

cractical sense. In the final analysis, it is my clients funds which will be affected by a final judgment. At present, no existing party represents the interests of my clients in this action. While we, of course, recognize the interest of the federal defendants in defending the regularity of their conduct and the validity of the regulations under which they acted, I recognize that the interests of the federal defendants and my clients are not identical and I strongly doubt whether the federal defendants and the United States Attorney would be agreeable to undertake the defense of my clients' interests in this action or, even assuming ouch undertaking, whether such representation would be "adaquate" within the meaning of Rule 24. See e.g. Molpe v. Poretsky, 144 F.2d 505 (D.C. App. 1)44) (intervention by adjoining property owners allowed in action against soning commission to set aside a soning order on the ground that the property owners' interests were not adequately represented by the coming commission. Bio quadrally 3D Moore, Federal Practice \$24.00-1, p. 24-291, et sog.

Finally, although I have just begun my review of the record presently before the Court, I delieve that there are several threshold legal issues, including among others, the standing of plaintiffs and the existence of a justiciable controversy which have to be determined before reaching the facts underlying the federal defendants' conduct with respect to the grants in question.

For these reasons, I respectfully request that the Court, if it deems such procedure desirable, meet with counsel for the parties with respect to this application for intervention so that it may be determined. I recognize that Rule 24(c) provides for service of a motion to intervene, but given your Honor's familiarity with this action, I would consent to this letter being considered as such motion unless your Honor believes that a more formal motion accompanied by a legal memorandum is necessary.

Should your Honor deem it advisable to hear counsel with respect to this matter, I request, subject of course to the Court's convenience, that such hearing be held early next week since I am scheduled to leave the United States on Thursday, March 14th and will be out of the country until April 2nd.

Respectfully yours,

AMM/rs

Arthur M. Handler

cc: No. Pamela Davis
Assistant United States Attorney

is. Lois D. Thompson Suburban Action Institute Varrytown, New York

bce: Messo. Burns and montgomery.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

RACHEL EVANS, et al.,

Plaintiffs,

-against-

JAMES T. LYNN, Secretary, Department of Housing and Urban Development, et al.,

STIPULATION

Defendants.

73 Civ. 3475 (MP)

-and-

TOWN OF NEW CASTLE and KING GREELEY SEWER DISTRICT,

Defendants-Intervenors.

WHEREAS, on the 25th day of March 1974, pursuant to notice, defendants-intervenors took the oral deposition of plaintiff Rachel Evans, and

WHEREAS, based upon the facts elicited at the deposition of said Rachel Evans the undersigned parties, at the suggestion of the Court and in the interest of expediting a determination of the pending motions are desirous of obviating the necessity of taking oral depositions of the remaining named plaintiffs by entering into a stipulation with respect to the facts that such plaintiffs would testify to at such depositions,

IT IS HEREBY STIPULATED AND AGREED that the facts hereinbelow recited shall be deemed established and made part of the the record with the same force and effect as if such facts were sworn and testified to by each of the named plaintiffs in oral depositions in this action and this stipulation may be used by the parties in this action in the same fashion and to the same extent as oral depositions of plaintiffs as provided in Rule 32 (a) (2) of the Federal Rules of Civil Procedure:

- 1. Each and every plaintiff in this action, if asked at deposition whether he has looked for housing for himself or his family in the Town of New Castle would answer, "No".
- 2. Each and every plaintiff in this action, if asked at deposition whether he or any political unit or subdivision in which he resides applied for or was deprived of those federal funds which were granted to the Town of New Castle and to the King Greeley Sewer District would answer, "No".
- 3. Plaintiffs have no information to believe that the Town of New Castle will follow a policy of refusing to admit any non-residents of New Castle to the proposed park to be created with federal funds for any reason, including race, creed, color, or income.
- 4. Plaintiffs do not claim that any persons currently residing in, or persons who may in the future reside in King Greeley Sewer District, will be denied the use and benefit of the sewer system to be constructed with federal funds on the basis of race, creed, color or income.

5. Plaintiffs do not claim that the present swamp area to be used for the proposed park at any time has been utilized for low and moderate income multi-family housing.

Dated: New York, New York April 5, 1974.

LOIS THOMPSON, ESQ. RICHARD BELLMAN, ESQ. Attorneys for Plaintiffs

12.1 100

GOLENBOCK AND BARELL Attorneys for Defendants-

Thervelors

A Member of the Firm

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

RACHEL EVANS, et al.,

Plaintiffs,

: Civ. No. 73-3475

-against-

JAMES T. LYNN, et al.,

: AFFIDAVIT IN OPPOSITION TO : MOTION TO DISMISS FOR LACK

OF STANDING

Defendants,

STATE OF NEW YORK)

COUNTY OF WESTCHESTER)

FERNELL PATTERSON, being duly sworn, deposes and says:

ss.:

- 1. I am a plaintiff in the above-captioned matter and submit this affidavit in opposition to a motion by the federal defendants, joined by the Town of New Castle, to dismiss this action for plaintiffs' lack of standing.

 I submit this affidavit so the Court may be apprised of my interest in filing this litigation.
- 2. I am currently residing on Dobbs Ferry Road in a racially impacted neighborhood of White Plains, New York. I am employed as a full time science teacher by the Yonkers Board of Education and I receive a moderate income.
- 3. I have resided in Westchester County since
 1960 and during that time, I have always been constrained to
 reside in racially concentrated areas throughout the County.
 The neighborhoods in which I have resided are all characterized by dilapidated housing and inadequate levels of municipal

- 4. In my capacity as a school teacher and as a former employee of the County Welfare Department,

 I have become familiar with the utilization of some federal programs in the County. I have concluded that federal funding of the suburban areas in the County has been a prime factor in encouraging the "white flight" from the County's inner-city areas. This, in turn, has reinforced the prevailing patterns of racial segregation and the deterioration of the inner-city neighborhoods to my detriment.
- 5. I am in need of new, less-crowded housing and have looked for such housing in several parts of the County. I have been unable to find any housing opportunity for my family outside of the racially-concentrated inner city areas of the County. I have found that there is virtually no housing available to me in the County's suburbs, such as New Castle, because of restrictive local housing and development policies and prevailing patterns of racial discrimination in the sale and leasing of housing.
- 6. I firmly believe that the federal government has taken no role in employing its housing and community development programs to promote fair housing in Westchester. On the contrary, the various federal agencies have continued to provide community development funds to suburban Towns, like New Castle, that have actively opposed the development of low or moderate cost housing that might be available to the or to other minority residents of the County.

7. I have brought this litigation so that the federal government will be compelled to adhere to the Congressional policies requiring it to affirmatively promote equal housing opportunity in federal community development programs. If current community development practices continue in Westchester, I and my family will be forever foreclosed from enjoying the same housing opportunity and locational choice now enjoyed by the white citizens of the County.

5/ Farnell Patterson
FERNELL PATTERSON

Sworn to before me this 3rd day of May, 1974

Man

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

RACHEL EVANS, STEVEN R. KIDD, FERNELL PATTERSON, and WALTER B. BROOKS, JR., on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

JAMES T. LYNN, in his capacity as Secretary of the Department of Hous- : ing and Urban Development; JOSEPH D. MONTICCIOLO, in his capacity as Acting Area Director of the New York Office of the Department of Housing and Urban Development; S. WILLIAM GREEN, in his capacity as : Regional Administrator of the Department of Housing and Urban Development; THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; DOUGLAS CARROLL, in his capacity as Director of Tri-State Regional Planning Commission; THE TRI-STATE REGIONAL PLANNING COMMIS-SION; ROGERS C.B. MORTON, in his capacity as Secretary of the Department of the Interior; JAMES G. WATT, In his capacity as Director of the Bureau of Outdoor Recreation of the Department of the Interior; and THE DEPARTMENT OF THE INTERIOR,

Defendants.

73 Civ. 3475 (MP)

OPINION

APPEARANCES:

SUBURBAN ACTION INSTITUTE
Attorneys for Plaintiff
150 White Plains Road
Tarryton, New York 10591
By: Lois D. Thompson, Esq.
Richard F. Bellman, Esq.
J. Christopher Jensen, Esq.

PAUL J. CURRAN
UNITED STATES ATTORNEY FOR THE
SOUTHERN DISTRICT OF NEW YORK
Attorney for Defendants Lynn, Green,
Monticciolo, Morton, Watt, Department
of Housing and Urban Development and
Department of the Interior
By: V. Pamela Davis, Esq.

WIKLER, GOTTLIEF, TAYLOR & HOWARD
Attorneys for Defendants Carroll and
Tri-State Regional Planning Commission
40 Wall Street
New York, N.Y. 10005
By: Jeremiah T. Spires, Esq.

GOLENBOCK & BARELL
Attorneys for Intervenor Town of New Castle
60 East 42nd Street
New York, N.Y. 10017
By: Arthur M. Handler, Esq.
Andrea Hyde, Esq.

MILTON POLLACK, District Judge.

Milton Pollack, District Judge.

Plaintiffs, low-income minority residents of
Westchester County, have moved for a declaration of class
action status, Fed. R. Civ. P. 23, and for preliminary
injunction, Rule 65, to restrain two federal agencies

from supplying funds under grants that have been approved
to the Town of New Castle for the construction of sewer
facilities and the clearance of a swamp area for recreational use. In connection therewith, plaintiffs challenge
the Tri-State Regional Planning Commission's tacit approval of the grants in question.

Plaintiffs contend that all three agencies abdicated their responsibilities under the Civil Rights Acts and the regulations promulgated thereunder in granting federal funds to New Castle.

All defendants oppose the motion for class declaration and have cross-moved to dismiss the suit. The Town of New Castle has applied for leave to intervene herein and to support the cross-application for dismissal.

Disbursement of the funds granted has been withheld pending determination of the claims presented herein.

Since it is the decision of the Court that the plaintiffs lack standing to bring this suit the plaintiffs' motions must be denied and the defendants' and the intervenor's motions must be granted and the complaint dismissed for the reasons which follow.

The history of the grants.

In 1969, New Castle requested federal aid from HUD for the installation of a sewer system in Chappaqua, New York, pursuant to 42 U.S.C. §3102. That section authorized the agency to make matching grants to local communities for the development of, inter alia, basic public sewer facilities. Similar federal funds were requested pursuant to 16 U.S.C. §§4601-8 from the Department of the Interior, Bureau of Outdoor Recreation ("BOR") in 1972 to aid the development of a public park and recreation area in what is known now as Turner Swamp. agencies, after due consideration and investigation into the proposals, agreed to provide the requested funds. Subsequently, the Suburban Action Institute (counsel for plaintiffs herein) filed informal complaints with both agencies protesting the respective grants. These complaints in effect raised the same objections which plaintiffs have now brought before this Court, namely, that the approval of the grants would deny members of racial minorities and low-income persons equal opportunity to benefit from the grants, and were thus violative of federal civil rights laws due to New Castle's exclusionary and discriminatory policies. In both instances, agency counsel replied that the matter had been reviewed and that there was no legal basis for halting the grants.

Sometime after New Castle's applications were filed with them, both HUD and BOR forwarded the applications to the regional planning commission (defendant Tri-State) for comment, pursuant to federal regulations.

Tri-State replied to both agencies that it would not review the applications as they were "non-regional" in significance and thus outside its jurisdiction.

Urging that the grants are violative of the "civil rights laws and policies", plaintiffs then brought the instant action for injunctive and other relief to prevent the flow of the federal funds to New Castle.

On the return of the motions before the Court a preliminary discussion with counsel indicated that it

would aid any evidentiary hearing that might be required if the government were to file and serve copies of the administrative records of these grants and permit the plaintiffs to take depositions of officials and others involved in the consideration of the grants. At a later date the intervenor also requested an opportunity to examine the plaintiffs. Discovery to both sides was granted accordingly.

The plaintiffs have thus been accorded a wide opportunity to make a factual investigation of the New Castle applications and the civil rights enforcement procedures utilized by the federal defendants and the defendants have had an opportunity to elicit the facts concerning the interest of the plaintiffs. The legal issue of standing raised by the motions, is now cast in sharp relief against this well-developed factual background. The Town of New Castle.

New Castle is predominately white and a well-to-do enclave. Almost 90% of New Castle is zoned for single-family, residential development on parcels of more than one acre; the median value of single-family homes in New Castle in 1970 was in excess of \$50,000. Median

family income in New Castle in 1970 was \$22,005 compared with \$11,349 in Westchester as a whole. Westchester County's population is approximately ten percent non-white. The Town of New Castle is only 1.3% non-white. New Castle has been involved in a recent, well-publicized skirmish with the New York State Urban Development Corporation. In that contest, New Castle successfully thwarted the state agency's attempt to construct a small 100-unit low-cost housing facility in the town. It is thus clear that New Castle continues to be resistant to attempts to alter its present housing character.

The Motion of New Castle to Intervene.

On March 9, 1974 -- some seven months after the commencement of this action -- the Town of New Castle applied for leave to intervene pursuant to Rule 24, Fed. R. Civ. P. Plaintiffs objected on the grounds of untimeliness of the application and because "delay" might be occasioned by an intervention.

Whether or not the motion to intervene was "timely" brought is a question of circumstances, and is not to be judged merely by the calendar. The lack of demonstrable

prejudice to the plaintiffs from the allowance of the requested intervention is decisive here on the question of timeliness. See, e.g., McCausland v. Shareholders

Management Co., 52 F.R.D. 521 (S.D. N.Y. 1971). See also

Diaz v. Southern Drilling Corp., 427 F.2d 1118 (5th Cir.),

cert. denied, 400 U.S. 878 (1971) (intervention allowed one year after commencement of suit; no showing of prejudice).

New Castle has a primary interest in the grants involved herein and reason and equity indicate that its application for leave to intervene should be granted and it is so ordered pursuant to Fed. R. Civ. P. 24(a)(3).

Standing of Plaintiffs.

The threshhold, and decisive, issue in this case is whether plaintiffs have standing to bring this suit.

The law of standing is no mere arcane, procedural.

punctilio; the requirement that plaintiffs must have standing to sue goes to the very essence of the guarantee that

"questions will be framed with the necessary specificity,

that the issues will be contested with the necessary adverseness and that the litigation will be pursued with the necessary vigor to assure that the constitutional challenge

will be made in a form traditionally thought to be capable

of judicial resolution." Flast v. Cohen, 392 U.S. 83, 106

(1968). See also O'Shea v. Littleton, U.S., 38 L.

Ed. 2d 674 (1974); Baker v. Carr, 369 U.S. 186, 204 (1962).

Consequently, Courts are vigilant in requiring that

litigants maintain a personal stake in the outcome of the controversies they present. DeFunis v. Odegaard, U.S.

___, 42 USLW 4578, 4588-9 (decided 4/23/74) (Brennan, J., dissenting).

Justice Frankfurter referred to "standing" as a "complicated specialty of federal jurisdiction." U.S.A.

ex rel Chapman v. Federal Power Commission, 345 U.S. 153,

156 (1953). The federal courts have long struggled to define the proper outer limits of this obscure, elusive and amorphous concept. The law is now clear that standing exists where plaintiffs can satisfy the two-pronged test that they have suffered -- or will suffer -- an injury in fact, and that they are at least arguably within the zone of interests protected by the relevant statute.

Barlow v. Collins, 397 U.S. 159 (1970); Association of

Data Processing Service Organizations v. Camp, 397 U.S.

150 (1970); Warth v. Seldin, F.2d (doc. no. 73-1748, 2d Cir., decided 4/18/74).

Preliminarily, the statutes involved herein are not, as defendants contend, the community development grant statutes, 42 U.S.C. §3102 and 16 U.S.C. §§4601-8. The statutes here involved are the 1964 and 1968 Civil Rights Acts (referred to sometimes as Title VI and Title VIII), and the regulations promulgated thereunder, which prohibit federal agencies from granting funds to suburban areas which have discriminatory zoning and land-use regulations. The plaintiffs, undoubtedly as a result of the opportunity to make a factual investigation of the processing of the New Castle applications, have enlarged the charges in their earlier papers and the relief initially sought -- they seek a finding from the Court that the existing HUD and Interior procedures fail to conform with the law in respect to community development. grant applications; that those agencies should be compelled to adopt meaningful civil rights review procedures; that they have abdicated their responsibilities under the civil rights laws by alleged appalling neglect of the needs of minority and other low-income persons constrained to live in the intolerable environment of America's slums.

This "overview" (so denominated) suggests that plaintiffs in addition to their personal status should be considered as private attorneys general if that is recessary to permit them to assert these claims. The standing of the plaintiffs to raise their points arises, if at all, not under the community development grant statutes but, under the umbrella of the Civil Rights Acts.

The Supreme Court has declared that the Civil Rights Acts evince a congressional intention to define standing as broadly as is permitted by Article III of the Constitution. Trafficante v. Metropolitan Life

Insurance Co., 409 U.S. 205 (1972). See also Hackett v.

McGuire, 445 F.2d 442 (3d Cir. 1971). However, even if plaintiffs are deemed to be within the ambit of the Civil Rights Acts, that by itself does not satisfy the "two-pronged" standing requirement noted above. For it is the existence of an injury in fact which is the sine quanon of standing; there must be, at base, some threatened or actual injury to the plaintiffs resulting from the putatively illegal action before a federal court may assume jurisdiction. Litigants who seek to vindicate their

value preferences through the judicial process where there is neither injury in fact to plaintiffs nor a personal stake in the outcome of the controversy, viz., an actual and immediate interest, lack standing to sue. O'Shea v. Littleton, supra; Linda R.S. v. Richard C., 410 U.S. 614 (1973); Golden v. Zwickler, 394 U.S. 103 (1969). See also Massachusetts v. Mellon, 262 U.S. 447 (1923).

While the Supreme Court has expanded considerably the notion of what constitutes "injury" for purposes of standing, the requirement of injury is still a cardinal requirement, even where statutory issues are raised. Compare United States v. Students Challenging Regulatory Agency Procedures, ____ U.S. ___ (1973) (very slight injury shared by many sufficient for standing) with Sierra Club v. Morton, 405 U.S. 727 (1972) (no injury alleged). See also Brookhaven Housing Coalition v. Kunzig, 341 F. Supp. 1026

(E.D.N.Y. 1972). As was noted in Sierra Club,

broadening the categories of injury that may be alleged in support of standing is a different matter from abandoning the requirement that the party seeking review must himself have suffered an injury. 405 U.S. at 738.

5/

See also Linda R.S. v. Richard D., supra, at 617.

The lack of any injury to these plaintiffs precludes the Court from any further inquiry herein.

In seeking to erect standing for themselves, plaintiffs would have the complaint read in a vacuum rather than in relation to New Castle and plaintiffs' connection therewith. To be justiciable, their disagreement with the agency policies must, however, be connected to the alleged illegal activity, to wit, the funding of the New Castle projects. Plaintiffs do not, and apparently cannot, allege that they will suffer any injury from the grants that have been made by the agencies. They have not shown that they have suffered or will suffer any injury "aris[ing] out of, or relat[ing] to, the application of the procedures in question." Jenkins v. McKeithen, 395 U.S. 411 (1969). While it is doubtless true that plaintiffs' present alleged ghetto living conditions

are a very real and very serious "injury", that
"injury" is in no way linked to the particular grants
complained of herein. Nor would restraining deliverance
of the federal funds in any way alleviate their situation. Furthermore, plaintiffs' status as "potential

residents" of New Captle does not create an injury where none exists. Indeed, the recent decision in Warth v. Seldin, supra, dealt precisely with the issue of potential residents as injured parties in the context of a frontal attack on the restrictive zoning laws of a small upstate New York town. There, as here, none of the plaintiffs claimed that anyone refused to sell or lease housing to them; there, as here, plaintiffs neither had nor claimed any interest in land within the town or any connection with any plan to construct housing for them within the town. Dismissing the complaint for lack of standing, the Court of Appeals tersely stated that the plaintiffs lacked the necessary "personal stake in the outcome of the controversy". Slip op. at 2946. See also O'Shea v. Littleton, supra,; Sierra Club v: Morton, supra. The Court continued:

The essence of their complaint is that the zoning practices of the appellees are unfair. However true that charge may be, absent a showing that appellants themselves have suffered from these practices they lack standing to challenge them. Their dispute with appellees reflects primarily a political disgruntlement. They indicate no benefit which a judgment favorable to them would produce. They allege neither capability nor intent to construct housing for themselves on any land which the court might order rezoned as an element of relief.

Although the complaint in this case is admittedly not aimed directly at overturning zoning laws, as in Warth, it is clear that the legality of New Castle's zoning must of necessity be at the core of any ultimate determination of this controversy. To declare the federal policies unlawful, it would have to be established that New Castle's zoning laws result in unconstitutional racial and economic segregation. On their face, at least, the HUD and BOR grants clearly insure that New Castle must not discriminatorily administer the sewer or swamp projects; therefore, plaintiffs' attack would have to be aimed at New Castle's land-use regulations. And it is precisely this sort of attack that Warth declared "potential residents" could not make." Potential residents, as such, can claim at best only a remote, speculative injury, and a speculative injury cannot be made the cornerstone of standing. O'Shea v. Littleton, supra. See also Gaillot v. Department of Health, Education and Welfare, 464 F.2d 598 (5th Cir. 1972).

Plaintiffs' further suggestion that if they do not have standing no one will, while having surface appeal,

is similarly wide of the mark, both as a matter of law and fact. For one thing, the mere fact that a qualified plaintiff is not presently in Court in no way qualifies these, or any other, uninjured plaintiffs to litigate the issue posed here. To argue that everyone has standing simply because no one can now be found is a reductio ad absurdum that this Court cannot accept. Moreover, plaintiffs' argument ignores a class of plaintiffs that might well have the necessary standing. Thus, for example, were some other, perhaps neighboring, town that had lowincome housing and minority concentration to allege that it was denied federal funds in favor of New Castle's grants, it might perhaps be able to challenge the rating system of HUD and BOR which approved such grants. Since plaintiffs' main contention here appears to be that the federal defendants fail to properly take low-income and minority concentration into account when rating proposed funding projects, such a hypothetical plaintiff would be in a peculiarly appropriate position to complain, for its injury would have a direct nexus to the procedure challenged. Per contra, here the plaintiffs can point to no injury they personally have suffered because of the

agencies' actions.

Plaintiffs attempt as well to satisfy the standing requirement as federal taxpayers under the doctrine of Flast v. Cohen, supra. As a preliminary matter, Warth v. Seldin, supra, specifically disapproved of "taxpayer" challenges to zoning regulations. Furthermore, Warth reiterated the more general pre-Flast rule that

[a]s a general rule the interests of a federal taxpayer in federal expenditures are too "minute and indeterminable ... fluctuating and uncertain" to provide a basis for standing. Frothingham v. Mellon, 262 U.S. 447, 487 (1923).
Slip op. at 2943.

While the agency action complained of herein does indeed directly involve federal funding, there has been no showing by plaintiffs that the challenged action in any way adds to their tax burden. As such, there is no standing as federal taxpayers even assuming arguendo that the other strict requirements of Flast were to be met. Davis, Administrative Law Treatise (1970 Supp.) §22.09-7; Carlsbad Union School District v. Rafferty, 300 F. Supp. 434 (S.D. Cal. 1969).

Thus, no matter in what light plaintiffs are viewed, they simply lack the necessary standing to bring this suit. And since the standing requirement is jurisdictional, the Court is constrained to avoid consideration of the merits of the case before it -- tempting though that consideration may be. As Justice Blackmun wisely cautioned in his concurrence in O'Shea. v. Littleton, supra, "[w]hen we arrive at that conclusion [that there is no standing], it follows, it seems to me, that we are precluded from considering any other issue presented for review." See also International Longshoremen's and Warehousemen's Union v. Boyd, 347 U.S. 222, 223 (1954) (Frankfurter, J.).

Under all the facts and circumstances, therefore, the plaintiffs' motion for an injunction pursuant to Rule 65, Fed. R. Civ. P. is denied and the motions of the defendants and the intervenor to dismiss for lack of jurisdiction are granted. The complaint is dismissed pursuant to Rule 12(b)(1).

SO ORDERED.

May 22, 1974

Milton Pollack

U.S. District Judge

FOOTNOTES

- 1/ The Department of Housing and Urban Development ("HUD") and the Department of the Interior ("Interior").
- 2/ 42 U.S.C. §§2000d et seq and 3601 et seq, popularly known as the Civil Rights Acts of 1964 and 1968.
- 3/ Both Chappaqua and Turner Swamp are sections of New Castle. The sewer project is formally located in the "King-Greeley Sanitary Sewer District".
- 4/ See generally Jaffe, Standing Again, 84 Harv.L.Rev. 633 (1971).
- 5/ "[F]ederal judicial power is to be exercised to strike down legislation ... only at the instance of one who is himself immediately harmed or immediately threatened with harm, by the challenged action." Poe v. Ullman, 367 U.S. 497, 504 (1961) (Frankfurter, J.). See also D.C. Federation of Civic Associations v. Airis, 275 F. Supp. 533 (D.D.C. 1967).
- 6/ The relevant HUD and BOR files indicate that every effort has been made to insure compliance with the Civil. Rights Acts in the administration of the funds, as dictated by federal regulations. See, e.g., 24 C.F.R. \$1.4(2)(i). Thus, with respect to the BOR grant, the Town has signed an "Assurance of Compliance" form supplied by Interior to guarantee compliance with Title VI of the Civil Rights Act of 1964; furthermore, the General Provisions of the "Land and Water Conservation Fund Project Agreement" declares that "The [grantee] shall not discriminate against any person on the basis of race, color, or national origin in the use of any property of facility acquired or developed pursuant to this agreement", as well as a further assurance of compliance with Title VI and the regulations promulgated thereunder. The HUD agreement incorporates a similar "assurance of Compliance" form both as a separate document and as part of the grant agreement. And HUD's "Project Summary and Approval" form specifically concluded that, after examination, "[t]he

proposed facilities will serve the applicant's area of jurisdiction without discrimination against any minority group."

7/ Even if the issue of New Castle's zoning were eventually reached, it is at best doubtful whether that zoning would be declared per se unconstitutional in light of the Supreme Court's recent holding in Village of Belle Terre v. Boraas, U.S. (Dkt. No. 73-191, decided April 1, 1974). But see United Farmworkers of Florida Housing Project, Inc. v. City of Delray Beach, F.2d, 42 U.S.L.W. 2572 (5th Cir. 4/12/74).

8/ Plaintiff's reliance for standing on the Administrative Procedure Act, 5 U.S.C. §§500 et seq, is similarly misplaced. That Act in no way expands the concept of standing; the plaintiffs still must show that they are "aggrieved" by the agency action before they can obtain judicial review. 5 U.S.C. §702.

9/ Since the complaint is dismissed, there is no need to reach plaintiffs' class action motion.

SELECTED PORTIONS OF PRE-TRIAL DEPOSITIONS

(

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RACHEL EVANS, et al.,

Plaintiffs,

-against-

JAMES T. LYNN, SECRETARY OF DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,

Defendant.

Federal Court Bldg. Room 331 Foley Square, New York

November 27, 1973 11:15 a.m.

DEPOSITION of the Defendant, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, by SEDGWICK WILLIAM GREEN, taken by the plaintiff, pursuant to notice.

Beekman Reporting Service

Certified Shorthand & Stenorype Reporters

150 Nassau Street

New York, N.Y. 10038

W O R T H 2 - 5 9 5 4

to mark as an exhibit the first eight pages of that deposition in order to facilitate today's testimony.

You have had an opportunity to read those papers this morning and make certain editing notations, have you not?

A Yes, I have.

Q Does that testimony reflect an accurate background of your professional career?

A Yes.

MR. BELLMAN: We would like, at this time, to have the court reporter mark as Plaintiff's Exhibit 3 for purposes of these depositions the first eight pages of that deposition which was taken on May 29, 1973. And it is agreed by all parties that it will be made a part of this record in order to facilitate the depositions.

(Deposition consisting of eight pages marked Plaintiff's Exhibit 3 for identification, as of this date.)

Mr. Green, what are your responsibilities with respect to enforcement of the civil rights laws in terms of HUD Community Development Programs and specifically with respect to HUD's Water and Sewer Program?

A I'm in the chain of command of the Department's

responsibility for enforcing all of our civil rights responsibilities that flows, in most instances, from the Secretary to the Assistant Secretary of Equal Opportunity and from the Assistant Secretary of Equal Opportunity to the Regional Administrators. I forget which one flows from the Secretary of Labor to the Assistant Secretary of Equal Opportunity.

In any event, I then have full responsibility for Equal Opportunity within the Department.

Q What are your responsibilities with respect to the Community Development Programs and the Water and Sewer Program with respect to Title 6 of the 1964 Act and Title 8 of the Housing Act of 1968?

A My responsibility is to see that the activities of the Department within Region II are in compliance with those Acts.

Q Mr. Green, do you recall several years back a controversy or substantial discussion within the Department concerning the civil rights implications under Title 6 and Title 8 of Federal Grants in Aid going to communities that maintained exclusionary land use policies?

A There certainly has been discussion within the Department on that broad issue, yes.

Q Could you tell me when that discussion occurred

-1154

Task Force Secretary Romney made reference to?

3

No, I don't. I don't recollect at this point.

5

Could you tell me what civil rights enforcement policies are in the Department of HUD with respect to the

6

Water and Sewer Programs?

7

Basically that program, as you know, is now suspended, so that there has been no funding under it for

8 9

this year. Prior to that time we had a selection system

10

for picking projects which did give extra points to those

11

communities with open housing policies. Basically the

12

approach was that of providing extra points for a commun-

13

ity that was assisting us in achieving open housing objec-

14

tives.

0

15

Was that the entire effort that HUD was making with respect to Title 6 and Title 8?

16 17

A No. I thought you were referring only to the Water and Sewer Program.

18

With respect to the Water and Sewer Program. Q

20

19

Except that if we saw a case that involved some

21

form of discrimination, certainly we had responsibility under

22

those Titles, but basically in terms of using grants under

23

the Water and Sewer Program per se as an endorsement mechanism,

24

we were doing that by the project selection system that I

25

mentioned.

3

and sewer grants, they are totally implemented through the rating system?

I don't think that is a fair statement, because Title 6 goes well beyond the provisions of Section 808 of Title 8 in terms of the scope of activities that are covered. For example, we would have requirements in the construction contracts for employment of minorities. There are provisions also in the rating system for minority business opportunities. We would do compliance reviews of contractive performance in employing minorities in the construction work, so that as for Title 6 it would not be so limited.

I again am focusing only on the housing practices now and the land use practices and practices of housing discrimination that may exist in a community and I'm trying to determine whether or not HUD does anything else when reviewing a water and sewer application than trying to implement the rating system and reflect that discrimination.

Is there anything else that is done, not merely in construction but in the area of implementing Title 6 and Title 8 with respect to water and sewer applications?

Again, Title 6. I have indicated there are other things, and some of them would involve preconstruction activities, but basically in terms of implementing the obli-

6

5

7 8

9

10

11

12 13

14

15

16

17 18

19

20

21

22

23

24

25

monitoring. The area office Equal Opportunity staff is involved in preconstruction conference type of activity. They would serve as technical assistants for the program staff on equal opportunity issues that arise in the course of the compliance processing, but in terms of compliance as we use the phrase, that is a regional equal opportunity function; the monitoring of the construction contractor, the handling of complaints.

Q Turning to the rating report, could you tell me what in this document reflects a civil rights consideration?

A 5-E, for example, minority business participation. Then, under 3, Part B, Accessibility, refers to whether housing will be accessible on a non-discriminatory basis to families with low and moderate incomes, simply in terms of growth and development the planning Part 1-C, to the extent that the area-wide planning organization had adopted goals, which were laced to equal opportunity, to some extent 5-B, on the job training 5-C job opportunities for under and unemployed could relate to equal opportunity issues.

Q When was this form adopted?

A I believe that this came out initially after the Department decentralization in September of 1970. I don't know that that is when this particular version of it

-116a-

VORTH 2.80

Again, 4, the considerations would not normally be a civil rights issue per se, but again we know that there has been a past tendency to provide less services to minority areas, so that that could have civil rights implications.

Again, many of the elements in Part 5 either directly relate to civil rights as, "E" or could have relevance in terms of minority enterprise or minority employment opportunities, and similarly 6, Community Development could have relevance to civil rights issues to the extent that community activities related to those.

Q It's fair to say, however, that the way this rating system is structured that a community which had no low cost housing but had all kinds of other needs or sanitary sewer system could get a relatively high score on this report?

A Yes, sir.

Q Do you have any information as to the minimum score that an applicant must receive so that potentially that applicant will be approved for a grant?

A I'm not sure what the procedures were in effect at this time on that. I have the impression there were cut-off points established, but whether those were established by the area office or whether our regional staff set

-117a-

.

21 22

2.4

14

15

16

17

18

19

20

21

22

23

24

25

1 them or whether there was some sort of informal central 2 office policy, I just don't know. 3 Q Mr. Green, I refer you to Documents 38 and 39 4 of Plaintiff's Exhibit 1. Are you familiar with those 5 6 documents? 7 A Yes. Document Number 38 is a letter from you to 8 Mr. Gold and Mr. Davidoff responding to a complaint letter. 9 10 A That's right. 11 That letter of yours is dated February 2, 1972, is that correct? 12

That is correct.

In that letter you state that you are having the file on the King - Greeley sewer application reviewed and that you will advise as to the results of that review. Also, in Document 39, dated May 9, 1973, you state that the matter has been reviewed by the General Counsel and that there is no sound legal basis for cancellation of contract.

Could you tell me what transpired, all actions you took during this period of February 2nd to May 9th?

A Yes. I essentially caused three reviews to be made. One, I asked our regional program staff to take a look at what had happened in terms of programatic consider-

I orally

2	ations. Second, I asked our Regional Inspector General
3	for Investigations to investigate if there had been any
4	improprieties with respect to the award and third, I asked
5	counsel to advise me on the legal status of the matter.
6	Q Could you tell me, were these written instruc-
7	tions by memorandum that you sent out?
8	A I think I probably would have used I don't
9	have any specific recollection, but normally the Regional
10	Inspector General for Investigations does request a mem-
11	orandum in order to open an investigation. I would assume
12	that some form of transmittal document must have been used
13	to get the issue to Washington before the General Counsel.
14	My recollection, at this point, is that I orally
15	instructed the Community Development staff to take a look
16	at the situation.
17	Q Did you receive a report from the Community
18	Development staff?
19	A I don't believe I have received a written
20	report, but I really have to check that. I certainly
21	was communicated with by them.
22	0 With whom would you have been in communication?

With whom would you have been in communication?

I probably would have been with George Beaton who is the Assistant Regional Communicator for Community Development.

23

tion.

 MISS DAVIS: Mr. Green is not here as an attorney. I don't think he is in a position to render a legal opinion. We are talking about legal issues, and that is what we are litigating. It's not a matter of deposition testimony.

MR. BELLMAN: I have a right to know what the problem was when he found that the rating was potentially inaccurate. I don't understand what his choices were even at that point. He is implying that there were possible choices and there were legal problems involved in the choices, and that is what I'm inquiring into.

MISS DAVIS: Will you give me a moment to confer?

(A short recess was held.)

MISS DAVIS: If you will ask the question again.

MR. BELLMAN: Could you read back the question? (Question read back by reporter.)

A My problem was whether if I should ultimately determine that the rating had been excessively high, I had authority to terminate an existing contract between the sewer district and HUD.

().

	The state of the s
2	Q That question you reformed to the o
3	Q That question you referred to the Regional Counsel's Office?
4	A Yes, sir.
5	
6	Q Did you do that in the form of a memorandum? A My recollection is that I did not, but I
7	wouldn't be sure.
8	Q Did you get an opinion on that issue?
. 9	A Yes, sir.
10	Q Could you tell me what that opinion was?
11	MISS DAVIS: I object.
12	MR. BELLMAN: It has nothing to do with
13	this litigation.
14	MISS DAVIS: It is a privileged statement.
15	It's a statement from the attorneys to himself.
16	Q Did you make any determinations based on the
17	advice you received?
18	A Yes, sir.
19	Q What was your determination?
20	A Not to take any steps which would lead to termina-
21	tion of the contract.
22	Q Did you determine you were legally barred from
2.3	taking any action to terminate their contract?
24	MISS DAVIS: I object to the question unless
25	A I didn't consider it my function to make a legal

· 121a-

25

2	determination.
3	Q Did you make the determination that you lack
4	the authority to terminate the contract?
5	A I made the determination that I would not
6	terminate the contract.
7	Q Did you make the determination that you lacked
8	the authority?
9	MISS DAVIS: He has answered that question.
10	MR. BELLMAN: He didn't answer that question
11	The question is: Did he make a determination
12	that he lacked the authority to terminate the
13	contract.
14	MISS DAVIS: You asked that question and he
15	answeredit.
16	MR. BELLMAN: Let him answer it again.
17	A I made the determination not to terminate the
18	contract. I did that on the basis of the advice of my
19	General Counsel as to my authority to do so.
20	Q Did Mr. Beaton or anyone on his staff undertake
21	to prepare a revised rating report on this project applica-
22	tion?
23	A I don't recollect seeing one.

or the staff would have given to this application?

EREKMAN HAPOLING De

Did Mr. Beaton tell you what score he would have

2 in the sense of my looking at the files in the area office 3 or anything of that sort. 4 But you did talk to area office people? 5 I do every day. 6 Did you take any action as a result of being 7 informed that there was an absence of a rating report in 8 the file? I think at the time I was told about that, I 10 was told that the person who had prepared the rating report 11 was going to do it, or perhaps that he had already done it. 12 I'm not sure at this stage. The basic action I have taken 13 is the action I have already described. 14 Who told you that the report was going to be 0 15 redone? 16 Again, I don't remember where I got that infor-17 mation from or whether I was told that it was to be redone 18 or had been redone. 19 Q What was your response to that information? 20 To express unhappiness at the sloppiness of A 21 the area office operations. 22 Q Did you approve of the redoing of this document? 23 There didn't seem to me to be much alternative. A 24 Q What do you mean by that?

-123a

I was unhappy with the situation but it seemed to

me that the best we could do to document what had occurred in the office in this case --

4

Would be to redo the document?

5

A That's right.

6

You approved of that action?

7

8

A If by approved you mean I thought that this was a process we ought to follow as a general pattern, no.

9

Q As to the specifics of this pattern, you approved of the recreation of this document?

10

A That is correct.

12

Q Did you have an opportunity to review the recreated document? I'm referring now to Number 9, Plaintiff's Exhibit 1.

13

15

16

17

A Again, I did discuss the ratings, I believe, with the Assistant Regional Administrator, George Beaton. I think the discussions were that the effort was to try to

18

recreate the original document to reproduce the ratings that

19

20

had been given on that document rather than to rerate the case at that time in producing this document, since at this

21

point and time, as I understand it, the contract had already

22

23

24

Q Did you ever review this specific does

been executed with the applicant. So that in essence we

were simply providing a document that should be in files

25

Did you ever review this specific document, Number

BETKHAN EUPORTING SERVICE

9, the recreated document at any time?

A Again, I discussed the ratings that had been given to the project with the Assistant Regional Administrator for Community Development, George Beaton. I suppose that constitutes a review.

Q I understand you discussed the rating, but did you ever review the actual physically recreated document at that time?

A I frankly don't remember. We discussed the numbers but whether he told me what the numbers were or whether he showed me the paper, I don't know.

Q You did not request an opportunity to see the paper?

A I don't recall making such a request. I simply asked him what the ratings were given to the various items, but whether they were given to me in the form of this piece of paper or written on another piece of paper, or whether they were simply orally told to me, I can't remember.

Q Did you have any discussion as to whether or not in the recreation of this document a notation of the fact that it was being recreated would be placed on the document?

A I don't recall any such discussion.

Q Did that occur to you at the time that that might be a proper way to proceed?

A Again, I can't recall what occurred to me at that time. There certainly was no attempt on my part, nor do I believe there was any attempt on the part of Mr. Beaton to pass this off as the original. We knew we were simply trying to provide a historical record in the file.

Q There was the distinct possibility, however, that the numbers would not be the same as the prior document?

A That was the possibility since we did not have the prior document. We were proceeding from people's recollections and efforts to recreate what they had earlier done. Again, if I can say one thing, there was a recollection in the area office of the total number, so I think from their point of view, they feel that that number is accurate. I don't think they have the same degree of assurance as to sub-numbers.

Q Looking at the Document Number 9 of Plaintiff's Exhibit 1 now, there is no way to tell, is there, that this document in fact was not created or prepared at or about the time it was signed and dated?

A Except that there is on it, and I don't know

- 126a -

	2	Q Is it possible that you did?
)	3	A It's possible that I did. It's possible that
	4	I did not.
	5	Q Did you receive any advice at all from Washington
	6	with respect to recreating this document?
	7	A I really don't recollect that either.
	. 8	Q Did you have any personal telephone conversations
	9	with any congressman or senator, anyone in their offices
	10	concerning this matter?
	11	A I don't recall that I did. Normally, we try
	12	to refer telephone calls from staff of congressmen or
	13	senators to my Special Assistant, David Burns.
	14	Q Did Mr. Burns inform you of any calls?
	15	A I don't remember. We get a heavy volume.
	16	Q Can we turn to Document Number 24 of Plaintiff's
	17	Exhibit 1? This is the engineering review report. Could
	18	you tell me why the engineer undertakes to determine whether
	19	or not there is a non-discrimination in the application or
	20	in the project?
	21	A I assume this because it is on the form that is
	22	given to me to fill out.
	23	Q Do you consider an engineer to be qualified to

make that determination?

24

25

The engineer has to make a sight visit and to an

extent this sort of thing could be determined just by looking around, what is going on in the area, and to the extent that you are talking about discrimination on the grounds of race which is purely a question of looking, I suppose an engineer can look as well as the next person. It certainly adds one sight visit on that question. Certainly, in terms of the question of whether it's a lesser service, an engineer would have the capacity to make that judgment whether one system was inferior to other parts of the system.

Q This engineering report is geared to or focuses on the individual applicant, is that correct?

A The individual project, yes.

Q Has your office ever made an attempt to determine the regional impact of community development projects on furthering or diminishing low cost housing opportunities in a region?

A Certainly to the extent that the rating form goes into that, the area office would have done that. It's possible again to the extent the planning people who are in charge of the 701 grants review the activities of the planning agencies that are funded under 701. That kind of thing could become an issue, but I have not been specifically involved in such activity.

-1284-

-1286

I'm not sure I could name it.

Q Were you aware that there was substantial opposition in the Westchester communities to this proposal?

A Yes.

Q Do you consider it your responsibility under
Title 8 to inquire into the U.D.C. effort in Westchester
County and to review possible applications from those
communities in Westchester County for Federal aid?

A My personal responsibility?

Q Or your office's?

A It would not be the regional office's responsibility because the regional office does not handle grant applications. Grant applications are handled by the area office.

Q Did you consider it the responsibility of the area office to consider the ongoing controversy between U.D.C. and the Westchester communities with respect to grant applications?

A Yes, I would think that they ought to be aware of it and knowledgeable about it and consider it. On the other hand, the form they are required to use and the rating system that they are instructed to proceed by only tangentially would take that kind of issue into account through the various criteria we have been through earlier. Strictly speaking

2.3

2	they	would	apply	the	rating	syst	em in	choosin	ng projects	
3	They	would	not au	ıtoma	atically	, be	able	to take	that into	

account. On the other hand, if they had called the matter to my attention, I might have consulted with Central Office

and some policy might have been adapted to the application.

Q To your knowledge, Area Office did not consider the U.D.C. controversay with respect to grant applications from those nine towns?

A I do not know whether they did or did not.

Q Do you consider the rating report to be a constraint with respect to Area Office considering other matters such as U.D.C. controversy with respect to reviewing grant applications?

 Λ Yes. I think it is something of a constraint in terms of applying criteria that aren't in the rating report.

Q Do you think that a more viable affirmative action program would be flexible enough to consider this kind of problem?

A We discussed this whole problem of project rating systems at some length at the meetings of the Regional Administrators and the Central Office people. The Secretary, the Under Secretary, the Assistant Secretary and their staffs, basically, I suppose, with the field people wanting the great-

est flexibility possible and the Central Office people
feeling that in a decentralized organization there had
to be some objective criteria in order that the Central
Office could have reasonable assurance that it was only
objective consideration leading to decisions as to which
applications were to be funded and which were not.

Q The rigidity could, in your opinion, stand in the way of a more effective affirmative action program?

A The use of the selection criteria obviously meant that without approval from higher up one had to live with the selections given in the selection criteria. The selection criteria do include affirmative action issues, but if you wanted to give those more weight than the selection criteria called for, one would have to seek Central Office approval to vary from the Central Office weighting.

Q To your knowledge, does the capacity of treatment facilities relate in any way to otential development levels?

A Yes.

Q Could you tell me what the relationship is?

A Well, as a practical matter, intense development requires sewer lines and sewerage treatment plants.

Q Would the size of a sewer line, for example, prevent multi-family construction in an area?

-1310-

 A I'm not an engineer but I would assume the size of the line would relate to the capacity.

Q Does HUD have any procedure for reviewing grant applications for modern sewer facilities to determine whether or not the proposed project would lock-in a low residential development and bar a more intense multi-family development?

A Certainly the procedures in the project selection system do deal both with capacity for future growth in rating and also the availability of housing on a non-descriminatory basis for families with low and moderate incomes, and to the extent that those issues relate to multi-family versus single family, I think it is a means of addressing those questions.

Q I don't understand those provisions to constituted a review of the specific project application to determine whether that application potentially could serve multifamily housing where there is an absence of such housing in a given area, or do you disagree with that?

A As far as we have an order dealing with orderly growth and development, I do disagree with you.

Q You are referring now to Plaintiff's Exhibit 2. What page and what provision?

A 1-B, again to the extent that an area-wide planning organization has established developments, their cross

2	acceptance by the unit of government would also be rele-
3	vant to that.
4	Q It's true, is it not, that in terms of a com-
5	munity that has shown reluctance to allow in multi-family
6	housing and lower cost housing that the reasonable foresec-
7	able growth would have to be defined by a unit other than
8	the applicant for that to have meaning?
9	A The language is reasonable foreseeable growth
10	needs.
11	Q Of the area?
12	A Right.
13	Q That need would have to be defined by other than
14	the applicant, is that correct?
15	A Yes. We do the rating on these systems, not
16	the applicant.
17	Q Would a community such as New Castle or the
10	King - Greeley District be required to have a workable
19	program in order to receive
20	A The workable program requirement by statute
21	applies only to the Urban Renewal Programs.
22	Q You sit, do you not, on the Board of Tri-State
23	Regional Development?
24	A I do, as an ex officio non-voting commissioner.
25	Q Excuse me?

	-
2	
3	
4	de
5	
6	
7	on
8	as
9	
10	to
11	Pr
12	it
13	
14	We
15	re
16	
17	
18	wor
19	
20	Tri
21	sta

I'm an ex officio non-voting commissioner.

Are you aware that Tri-State in this matter termined that the application had no regional significance?

I have been so told, yes.

In your opinion does an application such as this e for sanitary sewer collection facility in a town such New Castle have a regional significance?

My understanding is that at the time this came Tri-State it had preceded any announcement of the U.D.C. ogram for Westchester and that is why Tri-State felt that was of non-regional significance.

Knowing now that U.D.C. was focusing on the stchester Area, do you consider that the application had gional significance?

A Yes, sir.

Had U.D.C. not been involved with Westchester, ald such an application have regional significance?

I think that would depend on the state of the -State Housing Plan. At the present time, as I underind the state of the Tri-State Housing Plan, they have a calculation modeled by counties for total units, but they have taken it below that and I believe they may be looking to counties to do that. Nor have they defined what proportion should be low and moderate, income, to the best of my knowledge.

25

22

23

24

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

RACHEL EVANS, et al.,

Plaintiffs,

-against-

JAMES T. LYNN, Secretary of Department of Housing and Urban Development,

Defendant.

Federal Court Building Room 331 Foley Square New York, New York

November 20, 1973 10:00 a.m.

DEPOSITION of the Defendant, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, by GERALD V. CRUISE, taken by the plaintiffs, pursuant to notice.

Beekman Reporting Service

Certified Shorthand & Stenotype Reporters

150 Nossau Street New York 38, N. Y.

W O R T H 2 - 5 9 5 4

1350 -

2

3

4 5

6

7

8

9

10

11

12

13

1.1 15

16

17

18

19

20

21

2.2

23

24

25

said defendant, without charge.

IT IS FURTHER STIPULATED AND AGREED that the witness may be sworn at the taking of this deposition before any Notary Public of the State of New York or Commissioner of Deeds of the City of New York and that the witness may read, sign and swear to his testimony when the same is transcribed before any Notary Public of the State of New York or Commissioner of Deeds of the City of New York as if sworn to before a Judge of the above named court or the clerk thereof.

IT IS FURTHER STIPULATED AND AGREED that all objections except as to the form of questions be and the same are hereby reserved to the trial of this action.

GERALD V. CRUISE, having been first

duly sworn before a Notary Public of the State of New

York was examined and testified as follows:

EXAMINATION

BY MR. BELLMAN:

Q What is your name, sir?

1

3

4

5

6

7 8

10

11 12

13

1.4

15

16 17

18

19

20

21

22

23

24

25

There is a date in the upper right-hand corner on the front sheet of the form, if you will notice.

- Yes. That is the date received by your agency?
- Yes. I don't see a date of signatures here.
- We could assume that perhaps there had been contact as early as the beginning of 1972?

A Well, yes, certainly because this is dated January 7th, the transmittal letter and I'm sure the initial contact certainly predated that.

Q What did you do with this application? Did you turn it over to a resources representative for processing, or this letter with the documentation?

Well, with the departure of Mr. Jacobs I didn't really have a resources representative. I had no one who was really doing this work, so that it was a very jury rigged catch as catch can type of arrangement. You are asking me specifically what I did with this package when it came in. I honestly don't remember specifically what I did. I was using one of my housing representatives on an emergency basis, a girl, to do some of this work for me. I might have turned it over to her and asked her to work with it. That is the best I can do as far as recollection is concerned.

Document 9 is, as I understand it, the rating Q

19.

report on the New Castle application, is that correct?

A No, it isn't.

Q Tell me what Document Number 9 is?

A Document Number 9 is a recreated, reconstructed rating form. It is not purported to be and never was purported to be, by me, to be the original.

Q Could you tell me how it came about that we have a reconstructed rating form that was turned over to the Court?

A I would be delighted to. Mrs. Eagle came in to me one day and said, "Mr. Cruise, do you have a rating form for this project?" I said, "I don't think so. Don't you have one?" She said, "I have looked through the files and I can't locate one." So I said, "Why do you want it?" And she said, "The Regional Office is requesting it." So I said, "Well, I will look through my funding files for fiscal '72 and '73 and '71."

MISS DAVIS: Could you tell us approximately when this conversation took place?

THE WITNESS: I assume that it is shortly after the visit of representatives of Suburban Action to the Regional Office to discuss this matter, but I don't recall the date. I mean, I can pull dates out of my head, eight months

ago, nine months ago. I really don't recall.

So I made a search through my unofficial files, several times, two, three times. I was unable to find the rating form. So I instructed Mrs. Eagle to tell the Regional Office that we couldn't locate it, which she did, I presume.

Shortly thereafter I was called up to the Director's Office.

Q Who is that?

A Mr. Maylott, and he said to me, "I understand that you can not produce a rating form on this project."

I said, "That is correct." He said, "Well, we'd better try to reconstruct a form so that we can show the Regional Office how the rating file, or attempt to show the Regional Office, how the rating file was arrived at."

As of now, the file doesn't contain anything. So I said, "Well, the only way the form could be reconstructed or attempt made to reconstruct it would be to get the man who did it in the first place and see if he can reconstruct what he did." At that time Mr. Mendoza was no longer working in the New York Area Office. He had transferred to the Boston Area Office, so an arrangement was made, presumably by the director. Mr. Mendoza visited the office and reconstructed, I guess, as best

-140a -

?

1.1

1.1

as he was able, the rating form, using, of course, the same figure, not in any way changing the bottom line.

Q How did you know what the same figure was?

A I knew what the same figure was in this way:

Shortly after Mr. Hendoza and I and one other gentleman visited the town in order to permit Mr. Hendoza to do the rating, when we returned to the office I kept pushing him for the rating, I needed it, and I recall a conversation with him in which he said to me, "The best I'm going to be able to come up with on this application is a 41." And I said to him, "Well, whatever it is, I'm not interested in whether it's 41 or 31 or 21. I'm interested in the rating being done and the rating number being assigned to the application."

That number 41 appears throughout the work papers and on funding schedules and so forth, so when he returned to the New York Area Office and was asked to attempt to reconstruct the rating form the number 41 was used, and that is where I had gotten the 41 originally.

You say the number 41 appears throughout. Could you tell me precisely where you have seen it?

A I have seen it on rough work papers that I have in my possession, not once but quite a few times.

Q You say Mr. Mendoza would have done the original

1

form if one was completed?

3

A Yes, sir.

4

5

Q Did Mr. Mendoza tell you whether or not he completed such a form?

6

A It is my understanding that he says that he has rated it.

7 8

O Did he tell you that he completed a written rating form at the time he was working on this project?

10

U

A No.

11

Q He did not tell you that?

12

A No.

13

O Did you specifically ask him whether or not he completed a written form on this project at the time he was working on it?

15

A No, I didn't.

17

18

Q Did Mr. Maylott ask you whether a written form had been completed on this project when you talked to him about it?

19

A Not that I recall. I don't recall that specific type of question.

21

2.2

23

20

Q You were called to Mr. Maylott's office to discuss why there was no such rating form in the file, isn't that correct?

24

25

A Yes.

,

?

2.2

0 Mr. Maylott didn't ask you whether the form ever existed?

A My best recollection of the conversation with Mr. Maylott is what I have stated to you earlier.

Q Could you repeat it, please?

A As I recall he said to me, "I understand that you are unable to produce a rating form on this project," and I said, "That is correct." Now, I don't specifically recall him asking me.

Q If I recall your testimony before you said Mr. Maylott then stated that we must reconstruct this, or something like that?

A That is correct, yes.

Q What did he mean when he said reconstruct? What did you understand it to mean?

A I understood him to mean that the form would have to be redone in such a way as close as possible to reflect what originally had been done but not change the rating that was used throughout and on which a funding decision was made.

Q Did you reach any conclusion when reviewing the files? I understand you saw reference to number 41, but did you reach any conclusion as to whether or not a rating report originally had been completed on this project?

_

A No. I really didn't. I don't recall receiving a rating form.

Q The normal process would be for a rating form to come across your desk?

A Yes, sir.

Q You do not recall ever receiving it?

A No, I don't.

O The term reconstruct is merely, as I understand it, to create a rating form for the first time, at least one that you will have seen for the first time?

MISS DAVIS: I object to that. I don't think that is necessarily what has been established. His testimony says what it says. My objection is that he does not recall whether or not he saw the original so with this witness we can not establish whether there was one originally and whether or not he saw it.

Q Mr. Cruise, did you ever see a rating report on the New Castle project prior to this reconstructed one?

A I don't recall seeing one.

Q You did not see one, is that your answer?

A To the best of my -- yes. I do not recall seeing one. I can't answer you honestly more accurately than that.

have been a telephone conversation, so that I knew he was coming on a particular day, that his arrival wasn't, you know, out of the blue.

Q How long did you talk to Mr. Mendoza that morning?

A I would say a matter of five or ten minutes.

Q Could you tell me what the substance of that conversation was?

A Well, I related to him the facts of the matter up to this point, that a claim had been filed, at least an inquiry had been made, and that we had been unable to produce the form, and I recalled with him the field trips that we made up to the town and he said that to the best of his recollection he prepared a form, so I said, "You know, I just don't recall the form or getting the form."

O There was no discussion, was there, of what Mr. Mendoza would do?

A No. I think it was understood that he was going to, the purpose of his visit, the reason of his being there in the office, was to attempt to reconstruct the form.

Q Was there a discussion about the number 41?

A There might have been. I don't specifically recall.

I would assume, although I don't have a clear recollection of

2.

1.4

this, I would assume the number 41 was mentioned.

Q You stated before that the number 41 appears on rough working papers in your possession, is that correct?

Cruise

A That's right.

Q Does it appear on any formal documents?

A I think that it probably will appear or does appear on -- this had to be checked, of course, but I think it probably will appear on the funding sheet which is a sort of a typed sheet and copies are reproduced of it, so I would assume that it would appear there, but that would have to be checked.

O Are you now referring to the demand list?

A Yes.

O The demand list is a document prepared in your office for projects for the area?

A When you say, your office, not my specific program area. The overall demand list is prepared usually by Mrs. Meyerson or her predecessor in conjunction with conversations and meetings of the program managers and the appropriate representatives, so it covers the entire geographic area served by the area office.

O Is it a document that is continually updated or redone, or how is it maintained?

9

10

11

12

13

1.4

15

16

17

18

19

20

21

1

a day or two later because we were playing musical chairs in the office as far as different people encumbering different jobs. The department had gone through a very cataclysmic reorganization and people were in jobs and then they were changing jobs. There was a lot of movement between these various jobs, so that I had to do research with the administrative people and time records in order to find out who was in what job during a given period of time.

Q My question was you went a few days later to Mr. Schaffer's Office?

Λ Yes.

Q How long a meeting did you have with Mr. Schaffer?

A I would say about ten or twelve minutes.

Q What did you discuss?

A I discussed the fact that there was a complaint filed with regard to this application, that we had been unable to produce a rating form, that Mr. Mendoza had come down from the Boston Office and reconstructed the form and that this was a reconstructed form and that as best as I could determine in checking with the administrative people he was the acting director of operations at that time and I asked him if he would sign the reconstructed form and he did and that was the end of the conversation.

22

~. 5

2.4

1.1

O Did you have a conversation as to what date he should put?

A Yes. I suggested that he put a date a few days after the date I had put next to my name because the normal course of events would be that after this rating form came across the desk of the program manager and was signed by him, it would then go to the director of operations, so that I was allowing for another couple of days for it to go through the mail and get to the director of operations and so forth.

O Did you have any conversation with Nr. Schaffer as to whether he recalled ever having signed a rating report on the New Castle Project?

A No, I did not ask him that question although in the conversation he didn't evidence any recollection of it. The whole subject seemed to be new to him, or unfamiliar to him.

Q Who wrote across this rating report, "Approved 9/29/72."?

A I don't know.

Q What did you wrote on this document other than your signature and date?

A Nothing.

O Is it usual for you to sign something like this

where there was some question as to a document being reconstructed without talking to the man who repaired it before you signed?

A I have never had this kind of experience before so I can't say to you what is usual and what is unusual.

Q You made Xeroxed copies of it. Did you take a copy into Mr. Maylott?

A I don't think I did.

Q You just inserted it into the file?

A I gave the copies to Mrs. Fagle and asked her to do it and then I told her to make sure that the Regional Office received a copy and then I do recall attending a meeting at the Regional Office on this subject.

Q When was that meeting held?

A Actually, to the best of my recollection I would say the meeting was held subsequent to the preparation of the form because I recall advising everyone at the Regional Office that we were not able to produce the original form and that this was a reconstructed copy.

Q Who attended that meeting in the Regional Office?

A I'm very clear on the cast of people. Mr.

Green attended the meeting. He is the Regional Administrator.

A gentleman by the name of Grant Reynolds who is the

Deputy Regional Administrator Mr George Beaton who is

more than happy to cooperate and go into the Judge and get a ruling, but in the absence of a ruling I'm going to assert the attorney - client privilege.

MR. BELLMAN: Could you state what your position is as to how far the attorney - client privilege extends in this matter? Is it everything that the Regional Counsel's Office might advise Government officials?

MISS DAVIS: I would prefer you not to tell me what my opinion is in this specific instance, where this was a meeting specifically concerned with the discussion in response to pending litigation where there were present two members of the Regional Counsel's Office that is obviously a discussion between attorneys and their clients which strikes me-as privileged.

MR. BELLMAN: Are you instructing your witness not to answer my question?

MISS DAVIS: Yes, I am.

Q Could you tell me, Mr. Cruise, why there was no notation placed on this rating report to indicate the manner in which it was prepared?

A No, I can't.

3

4

5

6

7 8

...

9

11

12

13

1.4

1.5

16

17

18

19

20

2.1

22

24

23

25

O Did that every occur to you that you should indicate in some way that this wasn't an original document?

A Frankly, no.

Q Have you ever, in any other case in your experience, reconstructed a document of this nature?

A No, sir.

Q Is this general policy of HUD to reconstruct documents in this fashion?

A Not in my experience.

O Have you ever heard of anyone else ever doing such a thing?

A No, I haven't.

O At some future point, you were asked to produce the documents in this file in conjunction with this case. Did you have any discussion with anyone as to the nature in which this document was repaired?

A Yes, I did.

Q Who?

A Well, as I told you earlier, I made it quite clear to everyone at that meeting, at the Regional Office. Secondly, when Mrs. Lollis, whom I previously mentioned, visited our office, and I think she visited me possibly twice, I made very clear to Mrs. Lollis that this was a

1

3

4

5

6

7

8

9

10

11

12 13

1.1

15

16

17 18

19

20 21

22

23

24

25

is not responsible for the decision to fund a project.

That is the final paragraph on this page? A

0 Yes.

I think that is basically what we discussed earlier. In other words, the ratings are arrived at for each application and put on a list in numerical order.

Let me digress for a moment. You are not Q responsible for funding determinations, is that correct?

That is correct. A

Who makes that decision? Q

The Director of Operations. A

Mrs. Meyerson?

Yes.

Do you know what the minimum value or minimum score is in your area which would permit funding of a water and sewer project?

Based on the experience in our office with the number of applications, the grant demand, I would say they usually establish a cut-off at about 40.

Is there any absolute figure that you are aware of that constitutes a cut-off?

The figure is, as I understand it, the figure is established based on the experience of the particular area

2.2

office. In other words, as I understand the regulation there is no minimum floor. Theoretically, if you had enough money over here to match all of your demands you could rate number 85 through number 1, the collection only becomes operative when you don't have enough money to match the overall demand, so that based on the experience of a particular office as to the amount of money you have available, the number of applications you have on file and how they look we assiged a numerical rating, and listed in numerical rating fashion you say we will be able to reach probably number 40, based on the amount of money we have, because you also know the amount of money represented by each application, so generally it has been the experience that we have been able to get down to about 40.

Q If an applicant gets a score of, say, 35 would that applicant be placed on the demand list?

A Yes.

Q So the score is irrelevant to being placed on the demand list?

A Yes.

Q I'd like to refer you to the rating sheet again, Section D Recommendations and on the New Castle application right under which you signed it says, "Based upon a rating of 41, the proposed applicant," and then there is a check,

3

1

"appears to meet the minimum value required for further processing."

4 5

I'm asking is there some point where the applicant would not have a minimum value, would not have the minimum value which would have warranted for the processing?

7

8

6

A Yes.

What would that point be? Q

10

I would say a score lower than 40. A

11

If the score was 39, you would not do any

12

13

further processing of that application? Right. Well, to amplify or build on that a

little bit, we would probably not invite a full applica-

14

tion.

15 16

If the decision is made not to invite a full application or a final application would the applicant be put on the demand list?

18

17

19 20

21

2.2

23

24

25

denil'

A I would think that the applicant would be on the demand list up until the time that that decision had been made. Once that decision had been made, they might stay on the demand list. However, you know, as a practical matter, what we do is take a ruler and just draw a line across the page so that all of those applications that are 40 and above are above the line and all

3

1

those that are below the line you just don't take any further action with regard to those. When that decision is made --

4 5

What decision?

6

7

A The decision that our available funds are such that we are not going to be able to reach an application for funding with a point score of less than 40.

8

Q During 1972, was that the situation also, that 40 was about the cut-off point?

10

A I have to be a little indefinite on that answer. I believe so. I would have to check that.

1.2

11

Q How high do the scores usually range?

14

13

A I have seen them in the mid 80's.

15

16

Q Is it possible for a town or an applicant with a score of 41 to receive funding before an applicant with a higher score?

17

A Not to my knowledge, no.

19

Q When the decision was made to fund New Castle, all applicants with higher scores were already serviced,

21

20

is that your testimony?

22

23

24

25

A Wait a minute. We can't over-simplify. We usually make funding decisions on sort of a quarterly period. In other words, in fact we are directed to do that. We don't sit and accumulate a whole back-log of

4

5

6

7

8

9

10

11

12

13

1.5

15

16

17

18

19

20

21

22

23

24

25

1

applications and wait until the end of the fiscal year and then make fundings. What we usually do is take the first quarter of a fiscal year, not that you would spend every available dollar that you received on funding every application that you have available during the first quarter of the fiscal year, but you would fund a certain portion of the applications that are on hand during the first quarter. We have a terminology. It's called batching dates. In other words, at the end of the first quarter you would say what do I have or what do we have in the terms of demands during this quarter and have we gotten any additional applications that are on the demand list. Let's say we are now in the second quarter of the fiscal year. We would say, what additional applications do we have that we didn't have during the first quarter because these things come in on a continuing basis.

- O In making that decision you would also take the highest scores?
 - A Yes, definitely.
- O This was the first quarter of that fiscal year, is that correct?
 - A Yes, sir.
- Q In September of 1972, you were making a decision to take a certain group of the highest acores on file at that

Cruise

69

2

3

4

5

6

7

8

9

10

11

12

13

1.4

15

16

17

18

19

20

21

22

23

24

25

time, holding some back, I take it, because it was not the completed fiscal year?

As you point out, it was the first quarter of a fiscal year, 1973. My recollection is that we had very few applications available for funding in that first quarter of fiscal year 1973.

What does that mean, available for funding? Q

Where we had full applications in or could get full applications in and apply the review process to a point where they would be eligible for funding.

Even though it was the beginning of the fiscal 0 year and if you had fewer applications, if a score was below 40, would it be possible for you to fund that applicant or would you normally hold back?

I don't think it would be prudent to fund any-A thing below 40 at that early stage in the fiscal year.

It appears that New Castle just barely made it over the line, is that correct?

I hesitate to use that terminology but a certain combination of fortuitous events took place which permitted the application to be funded, fortuitous if you are looking at it from the standpoint of the town.

Q What were those events?

The events were that we had received monies from

the Regional Office, fund allocations. We wanted to have some evidence of activity in the first quarter of the fiscal year. We had the application on hand. It was a carry-over. We didn't cover this in our discussion but this was a carry-over. We had this application in the house for fiscal year 1972 but the application was not funded because it didn't rate sufficiently high to be reached, so the fiscal year terminated, fiscal '72. We had the application on hand. We carried it over into fiscal '73 and when the first quarter came the application was there, the full application in the house, which we could take action on.

Q Were there any applications that were carried over from the previous fiscal year?

A There may have been. I would have to check.

O Before you signed this, did you go through the scores that I'r. Mendoza had attributed?

A I just checked it. I checked the arithmetic and then I did read the instruction form. Yes, I did.

Q So you reviewed his work before signing?

A Yes.

Q Did Mr. Schaffer review it?

A Not in my presence.

Q He didn't sign it in your presence?

2.

1.1

member of the town board. We discussed the application.

The principle question paramount in their mind is are we going to get any money, are we going to get funded, when are we going to get funded, what are our prospects, and I talked in general terms that we were up here to give Mr. Mendoza, who was going to rate the project, an opportunity to look at the conditions in the field. We were in no position to make any commitments as to whether or not funding action would be able to be obtained.

Mr. Mendoza went into some technical discussions about the program. The town engineer, although none of us were technically trained people, but the town engineer and the engineering consultant spread some maps out on the table and showed us generally where the lines were going to go and what areas were going to be serviced and things of that nature, and the meeting adjourned and Mr. Soyland, the town engineer took Mr. Mendoza, myself and Mr. Drucker in what I presume was the town car and also the engineer, the consultant, accompanied us in the car and we drove around the area and at several different points during the tour Soyland stopped the car in order to allow us to observe water seeping out of the ground near drainage ditches by the side of the road and running across walks, showing that these were septic tank systems

that were not functioning and that there was a considerable health hazard generated from these seeping septic tanks running out into the open.

We also discussed some real estate problems that were inherent in the proposed project because of the fact that some of the sewer lines were going to run along, as I recall, the rear property lines rather than running through the streets, through public rights of way, and therefore the question of easements, and so forth, came up, and that was discussed. We drove back to the town hall. We did not even go back to the building. We left Mr. Soyland in the parking bt and we drove back in to New York.

Q Did Mr. Mendoza, to your knowledge, make any more visits to the town?

A Not to my knowledge.

Q Has there any discussion as to the nature of the housing in New Castle?

A Other than the general discussion in the car as we drove through the area, I don't recall any other discussion as to the nature of the housing.

- Q Was there any discussion as to the zoning patterns?
- A None, to my recollection.
- Q Was there any discussion of the proposal by the

- 161a -

Who has?

1

A Mrs. Malone.

3

0 Mrs. Malone?

The Director of the Equal Opportunity Division.

5

0 When did that occur?

6

It occurred during two different sets of occurrences,

7

one, when we were working with the town of North Hempstead

in Massua County with regard to recertification of their

workable program, and the other I guess I wasn't one

9

hundred percent in saying that the second instance was with

10 11

Mrs. Malone, but I was certainly aware and I knew the

12

implications of Title 8 in connection with the town of

13

Hempstead which is in Massau County and of which I'm sure

14

your organization has knowledge, which refused to construct

15

any low income family housing but they wanted low income

16

elderly and our original administrator, Mr. Green took

17

the position that no additional low income elderly would

18

be approved for that town unless and until they provided

19

low income family.

water and sever programs?

20

What is your understanding, if any, of the relationship beforen these civil rights policies and the

21

22

23

24

25

Let me answer you this way. It is my understanding that while the department does not take the position that if you refuse to build low income housing or if you

24

25

refuse to build housing for people of low or moderate 2 income regardless of race, we will refuse to fund you 3 for water and sewer. I don't believe that is our position. 4 5 I don't think the program or the regulations contain that 6 kind of direction. I think that the rating system, having read the instructions that you have in front of you, is 7 designed, in that type of situation, that type of reluc-8 tance, that type of refusal or attitude on the part of the local government, is supposed to be or it is designed 10 so that that attitude would be reflected in the rating 11 which would result in a sufficiently low rating that the 12 application wouldn't be funded, because I recall during 13 the time of the town of Hempstead situation when there 1.1. was a lot of publicity in the press that Mr. Green had 15 been quoted by one of the local papers that because of 16 the attitude of the town government, they weren't going 17 to get any monies for neighborhood facilities, or something 18 like that and Mr. Green corrected the record to say that 19 what he said was that it is possible that such an attitude 20 would have an adverse effect on the rating and on the 21 ultimate ability for that community to receive funding, 22 but that there wasn't an automatic shut-off valve.

O As far as you know, with respect to, if I understand your testimony; correct me if I am putting words in your

Cruise

ascertain that for plaintiff.

2.2

Q Mr. Cruise, did you take any steps, such as you took after the complaint letter, after the legal action was commenced in terms of providing information or preparing reports in conjunction with this litigation?

A Other than my meetings with Mrs. Lollis in which I went over all of my papers and records with her -- of course, I don't know what type of legal action was initiated -- but the meetings with Mrs. Lollis and the meetings with the Regional Office, that is all.

- O Were there meetings at the Regional Office after the litigation was commenced?
 - A I don't know when the litigation --
- Q You mentioned one meeting at the Regional Office where several attorneys were present and Mr. Green was present. Were there other meetings you attended?
 - A One other.
- 20 Q When was that?
 - A I would say within probably two or three weeks after the first one.
 - Q What was the purpose of that meeting?
 - A That is a good question. A decision hadn't been made, I don't believe. You see, at the first meeting I

24.

9

11

12

13

14

15

16

17

18

19

20

21

2.2

23

1

received instructions from Regional Counsel to send a telegram over the signature of the director to the supervisor who also occupied some office with the King Greeley sewer district and that telegram told him to take no further action with regard to proceeding with the work, not to award a construction contract until further notice from our office.

- Did you send such a telegram?
- A 10 Yes, sir.
 - Did you ever provide them further notice from your of ice?

After the second meeting. At the second meeting there were further discussions as to courses of action to be taken. Shortly after the second meeting I was instructed by Regional Counsel to advise the applicant that they could proceed.

- How did you so advise them? Q
- A By letter.

MR. BELLMAN: Could we inquire whether both those documents could be produced?

MISS DAVIS: Do you have a copy of the telegram and letter?

THE WITNESS: I have a copy of the telegram and letter.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

RACHEL EVANS, et al.,

Plaintiffs,

-against-

JAMES T. LYNN, Secretary of Department of Housing and Urban Development,

Defendant.

Federal Court Building Room 331 Foley Square New York, New York

November 29, 1973 10:15 o'clock a.m.

Deposition of Defendant JAMES T. LYNN, Secretary of Department of Housing and Urban Development, by SUSAN ALEM, taken by Plaintiffs pursuant to Notice.

000

Beekman Reporting Service

Certified Shorthand & Stenotype Reporters

150 Nassau Street

New York, N.Y. 10038

W O R T H 2 - 5 9 5 4

objections, except as to form, are reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that counsel for Plaintiff shall furnish a copy of the within deposition to counsel for said witness, without charge.

SUSAN ALEM, being fist duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY

MR. BELLMAN:

Q What is your name, please?

A Susan Alem.

Where do you live?

A 8 Maple Street, Tenafly, New Jersey.

Q Is it Miss or Mrs.?

A Mrs.

Q Mrs. Alem, what is your professional position?

A I'm the Resources Development Officer for the Office of Community Development, Region 2. My duties as the Resources Officer are to monitor and evalutate the operation of the area offices in the program areas assigned to me which are water and sewer, open space, neighborhood facilities and public

2	facility loans.
3	Q How long have you held this position?
4	A More or less, with different titles since 1967 or
5	168.
6	Q How long have you been with the Department of
7	Housing and Urban Development?
8	A Since 1964, I believe it was.
9	Q Were you with any other agency prior to '64?
10	A I was with the legislative branch. I have about
11	19 years of Federal Service.
12	Q What do you mean, Legislative Branch?
13	A I worked for a Congressman and later for the St.
14	Louis Committee.
15	Q What was your training, in what area?
16	A You mean my degree?
17	Q Yes.
18	A I have a Bachelor of Arts in Government and Public
19	Administration from the American University.
20	Who is your superior in HUD today?
21	A Mr. George Beaton, the Assistant Regional Admin-
22	istrator for Community Development.
23	Q With respect to your responsibilities of monitor-
24	ing the area office, how is that work carried out?
25	A Through visits to the area offices, of which there
	* * *
	WORTH 2-5954

tions.

Q Is that latter person Mr. Cruise?

A Mr. Cruise is the program manager. Mrs. Meyerson is the Director of Operations.

Q You would deal most often with the people below Mr. Cruise?

A That is so.

Q When you go into the area office and ask them what is going on and they talk about various pending applications do you ever review the files on these applications?

Mell, we use a little different approach in our monitoring. The visits I make there, with the exception of the formal annual monitoring that we do each year are more in the nature of trouble-shooting. For instance, I will go in and one of the representatives will say I have this problem with such and such a project and it's at that point that I review the file. I just don't go in and start looking at files in these weekly visits. This is basically done once a year.

Q When was the first time you, if you have, reviewed the file on New Castle on the New Castle grant?

A Several months ago. In fact, it was last year.

There were two individuals from Suburban Action who came by
and talked with Mr. Beaton generally about New Castle, whether

	St. 774	
•	2	or not it had been approved I think was the question at the
a	3	time and they indicated at that time that a suit might be
	4	filed involving this particular project. At that point Mr.
	5	Beaton addressed a memorandum to Mr. Green, to the area of-
	6	fice, and to our Regional Counsel advising them of this visit
	-7	As a result of this visit we called in the files from the
	8	New York area office.
	. 9	MR. BELLMAN: Off the record.
	10	(Discussion off the record.)
	11	Q Do you recall when that visit was made?
	12	A No. You mean the month and the day?
	13	Q Approximately.
	14	A I don't really know.
	15	Q A request went then to the area office to review
	16	the file?
0	17	A We requested that the files be sent to the Re-
	18	gional Office for our review.
	19	Q Who made that request?
	20	A I believe Mr. Beaton did. Excuse me, Mr. Green.
	21	Q Mr. Green requested that?
	22	' A By memorandum.
-	23	Q Requested to whom?
	24	A The area director who I think at that time was Mr.
	25	Maylott.
		X V V

2	Q Some time after that meeting the file arrived,
3	right?
4	A Right.
5	Q You said earlier you had some disagreements with
6	the rating sheet which was now in the file?
7	A Yes.
8	Q How did you proceed, what did you do?
9	A I made an appointment with Mr. Beaton and sat
10	down and told him what I found, that I did disagree with the
11	rating, but by this time the project had been funded and the
12	grant agreement was signed so I don't know where we go from
13	here.
14	Q What did he say?
15	A He said, "I think we had better arrange a con-
16	ference with Mr. Green."
17	Q Did you perform any rating of the project?
18	A No. I never rated the project. That was the
19	area office's responsibility.
20	Q Never sat down or calculated what the proper score
21	would be in your estimation?
22	A As I went through the file I noticed where the
23	points had been assigned and jotted down my difference of opin-
24	ion.
25	Q Do you have any notes that you kept from when you -

	ll' -	
2	A	Unfortunately I didn't keep my notes.
3	Q	I turn to Plaintiffs' Exhibit 1, document 9. Is
4	that the c	copy of the rating sheet that you looked over?
5	A	It appears to be, yes.
6	Q	Tell me what problems you found with this rating
7	sheet?	i de la como de la com
8	A	The completion of this mating about 11.1 um.
. 9		The completion of this rating sheet. Under "Fi-
	nancial Ne	ed" I disagreed with A.
10	Q	Stop right there. Could you tell me? Now, that
11	states und	er Financial Need Ability, need for assistance an
12	award of 5	points was given.
13	A	Yes.
14	Q	Tell me, why did you disagree with that rating?
15	A	I believe I had checked the bonding capacity and
16	found that	they rated sufficiently high in the bonding market
17		ould actually have afforded the project without
18		sistance.
19	Q	How did you make that determination?
20	A	As I recall they had either an A or Triple A bond
21	rating.	
22	Q	Where do you look that up?
23	A	Moody's. I'm not sure of the rest of the title,
24	tit it's Mo	oody's.
25	Q	A Triple A or an A bond rating would indicate

24

25

Q Do you have any opinion as to how the person who completed this rating report may have arrived at a different conclusion than yourself on that category?

A This category was assigned by one of our finance

24

25

men in New York office who at that point had had a stroke and I couldn't question him.

Q I don't understand that answer fully. Your testimony is that this figure was derived from some other person in the area office?

A The rating system has input from other technical people other than the program person. This category rating was assigned by one of our financial people in the area office.

MISS DAVIS: Off the record.

(Discussion off the record.)

Q Your testimony is that there is a gentleman named

Joseph Herman that is in the financial office that assists

the resources people in completing these reports?

A He assigns the points for --

Q Financial needs?

A Yes.

Q You say he had a stroke?

A Yes.

Q When did he have a stroke?

A Earlier this year. It was just prior, really, to our requesting the files from the area office.

Q Did he have a stroke right after Mr. Mendoza reconstructed the rating sheet?

2	A	It must have been. He was driving and had the
3	attack whi	le driving.
4	Q	Have you ever talked to Mr. Mendoza about this
5	rating shee	et?
6	A	No.
7	Q	Go to the next category under Financial Need,
8	Relative Ir	ncome, and the applicant was given 2 points. Did
. 9	you have ar	ny opinion as to the proper score under "B"?
10	A	I would have given it zero.
11	Q	Could you tell me why?
12	A	Median family income in New Castle.
13	Q	Did you determine what the median family income
14	was?	
15	A	Yes, I did.
16	Q	How did you do that?
17	A	Census records.
18	Q	The 1970 census records?
19	A	That is correct.
20	Q	Can you tell me what the median family income is?
21	A	I think it was \$28,000.
22	Q	That was for the town of New Castle?
23	A	Yes.
24	Q	Can you tell me what you found to be the State
25	median fami]	y income?
		'\ '- '.

rating sheet, where you felt the rater had given insufficient points to the applicant?

A No.

Q As I hear your testimony, based on whether or not you had subtracted 2 points under financial need, Section C, non-Federal aid, you would have either subtracted 9 or 11 points from the rating, is that correct?

A Yes.

Q Mr. Cruise testified that at one of the meetings you described your rating of the sheet and said that you would have given a score of 30. Does that ring a bell with you?

A Well, 11 points would have made 30, yes.

Q If, in fact, you would have reduced this score by 11 it would have been in the categories you have so testified to?

A Yes. However, I was not rerating the project because the project had been funded and there was an outstanding grant. This was sort of for information purposes only.

Q Could you tell me, in comparative figures, is a 41 score a low or a high score for an applicant seeking water and sewer aid from HUD in this region?

A Judging from the experience I had from the programs administered from the regional office level it's a relatively low score.

2	Q Would an applicant receiving a 41 score be en-
3	titled to Federal aid normally, as you compare it with the
4	processing of other applications?
5	A It was not compared to processing of other ap-
6	plications in other area offices.
7	Q In this area office?
8	A There were other projects with a 41 rating that
. 9	were funded.
10	Q Would a project with a 30 rating normally be
11	funded?
12	A No.
13	Q Would it ever be funded?
14	A Conceivably it could be if all the projects in
15	the area office were in that range.
16	Q What is the lowest score that you are aware of
17	that an applicant has had in this area and has received fund-
18	ing?
19	A Forty-one.
20	Q How many other applicants, to your knowledge,
21	have had 41 scores and received aid?
22	A Forty-one, 45, that range, maybe half a dozen.
23	Q Out of approximately how many grants are we talk-
24	ing about and over what period of time?
25	A Out of maybe thirty, forty projects over a span

of a year and a half to two years.

Q During this period were there project applications that were denied by HUD for lack of sufficient funds?

A Yes.

Q Were there any projects that were, applications that were denied which had over 30 but less than 41?

A Yes. There were projects disapproved.

Q Were there quite a few or approximately how many in this year and a half period?

A I really can't say because I'm not as familiar with the disapproved projects as I am with the ones that were approved.

Q Do you have any idea?

A I imagine the number would be rather large because we always had about four times more applications than we could fund, and I'm speaking region wide now, not just in the area office.

Q These funding reports are for the area office only, or are they for the region?

A These were work sheets used by the area and regional offices. They were prepared prior to our visit, so that we could chart the annual progress and commitment of funds.

Q Allocations of funds are based on a regional



21

22

23

24

25

A Yes.

Q Did you say, "I have done this reconsideration of this"?

A I didn't reconsider it.

Q What did you say?

A I said I had looked over this rating sheet and I differ with the rating that is assigned. I was asked in what areas. I told them in which areas. They asked me the basis for my information and I relayed where I had obtained the information, and that was it.

Q Did anybody comment?

A Yes.

Q Who?

A A general discussion took place.

Q What was the nature of that discussion?

A What action HUD should take from here on out because by this time we obviously knew that the grant agreement was signed. We were discussing whether or not the applicant had complied with all our regulations, and then we discussed alternative actions to be taken, whether or not to notify the applicant to proceed, not to proceed, whether to cancel the grant or not.

Q Was there any discussion at either of the meetings with respect to whether a rating report had been pre-



	_	-
		1
2		
3		
4		
5		
6		
7		
8		
2 3 4 5 6 7 8		
10		
11		
12	-	
13		
14		
15		
16 17	-	
17		
18	-	
19		
20	-	
	-	

23

24

25

A Oh heavens, I don't recall any such comment.

Q Are the resource people who complete these rating sheets given any instructions by your office as to how to proceed?

A When the area offices were initially set up we had a two day training session. As a result of the problems that we were having in the New York area office and after a review of the rating sheets for the projects which were funded over the last two years when we made a review of those we found that we perhaps did need to schedule some additional training and we did so.

Q What transpired at these training sessions?

A Basically we discussed the rating systems, the reasons for assigning or not assigning points so that there would be consistency in project ratings not only within an office but from one office to another.

Q With respect to financial need and this median family income were resource people instructed to use census figures?

The resources people were instructed as to reference sources. However, these points were not assigned by resources people. The income and housing accessibility are assigned by our EMAD offices, Economic Marketing and Analysis Division, I guess, and then the bonding section is assigned



UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

RACHEL EVANS, et al,

Plaintiffs.

-against-

JAMES T. LYNN, Secretary of Department of Housing and Urban Development,

Defendant.

Federal Court Building Room 331 Foley Square, New York

November 29, 1973 1:50 o'clock P.M.

Deposition of Defendant JAMES T. LYNN, Secretary of Department of Housing and Urban Development, by ROBERT E. MENDOZA, taken by Plaintiffs, pursuant to notice.

000

Beckman Reporting Service

Certified Shorthand & Stenotype Reporters

150 Nassau Street New York, N.Y. 10038

W O R T H 2 - 5 9 5 4

. 2	a year ago.
3	Q When did you first become involved with the
4	New Castle sewer grant?
5	A I would say probably around February of
6	approximately '72. I was informed by Mr. Cruise, Gerry Cruise
7	who is the program manager.
8	Q I would like to go back a moment. What is a
9	Metropolitan Development representative?
10	A A Metropolitan Development representative is
11	responsible for certain programs within the Department of
12	Housing and Urban Development, like the sewer program, open
13	space program, urban beautification program, at the time, and
14	that's about it.
15	Q You said something about Mr. Cruise. You are in
16	his Department?
17	A No, I was not in his Department.
18	Q Did he assign the New Castle application to you?
19	A He asked my program manager, who was Ethan Harris
20	if I would be available to go with him to look at the project
21	area and perform the rating for the New Castle project.
22	Q You were not in the New York City area office?
23	A I was in the New York area office, but New Castle
24	is part of Sub-area 2, which is Metropolitan New York. Mr.

BEEKMAN DE PONTING SERVICE

Cruise is the program manager for Sub-area 2. He was with Mr.

2	A	We asked them questions related to support in
3	terms of the	categorical subdivisions of the rating system.
4	We talked abo	out the type of project, where the project was going
5	to be located	, service area, things like that, health
6	consideration	ns, also, which we would need in support of the
7	rating.	
8	Q	Did you do your rating that day?
9	A	I don't recall. I think probably it may be the
10	next day or t	the day after, because I think we were up there in
11	the afternoon	and I don't think we had a chance to.
12	Q	Did you make any other visits that day to other
13	communities?	
14	A	I don't believe so.
15	Q	How long were you in New Castle?
16	A	I would say approximately maybe half a day.
17	Q	Mr. Cruise was with you the whole time?
18	A	Yes. "
19	Q.	Did you drive up from New York City?
20	A	Yes.
21	Q	Did you come in a government car?
22	A	I think so. I believe we did, yes.
23	Q	Did you go in the morning?
24	Α	I don't remember specifically.
25	Q	Do you remember who you met with?

2	A I don't remember the names, no. The Town Engineer
3	was there and I believe the Town Manager, and maybe one or two
4	other people, but I don't recall the names.
5	Q When you did a site inspection, can you tell me
6	what transpired?
7	A Well, we drove through the proposed service area,
8	and I observed the type of housing and the areas that were
9	going to be served, the commercial areas, and we noticed the
10	situation in terms of some minor flooding and letching fields
11	and malfunctioning septic tanks.
12	Q What are letching fields?
13	A Letching fields are basically a system whereby
14	the best way to describe it would be the effluents from a
15	particular household would go into this field and it would be
16	diffused into the soils.
17	Q How long did your meeting take place with the
18	city officials?
19	A Possibly an hour and a half, two hours. I don't
20	recall specifically.
21	Q The site inspection took about how long?
22	A About another hour, hour and a half.
23	Q So you may have been there as long as four hours,
24	is that correct?

That is possible.

2 the New Castle project? 3 I believe it was just about a year later, in February of this year. Let's go back now. You are aware that this 6 rating sheet that you say you filled in prior to the project approval cannot be located, is that correct? 8 Yes. 9 In February of '73, what was your contact with 10 the project? 11 I was requested by Mr. Cruise to come down and 12 reconstruct the rating on the project. 13 You are sure it was Mr. Cruise? 0 14 A Yes, it was. 15 You were up in Boston at that time? Q 16 A That is right. 17 It was February of '73. Did you receive a call Q 18 from him? 19 I received a call from Mr. Cruise and he indicated 20 he had spoken to Mr. Maylott and he requested I come down, 21 but the call came from Mr. Cruise. 22 Q What did he say? 23 He indicated the rating system had been misplaced and some of the notes, and he suggested that since I was 24 25 involved in the initial rating, that I come down and try to

2	recons truct	the rating.
3	Q	What did you say?
4	Α	I wanted to be as helpful as I could and I said
5	I would come	down.
6	Q	Did you get clearance from your supervisors?
7	A	Yes, I did.
8	Q	Your supervisor in Boston?
. 9	A	Yes, it went through the proper channels, and I
10	got the okay	from the Director of Operations in the Boston
11	office.	
12	Q	Do you recall when you came down to New York?
13	A	I would say it was around the beginning of
14	February. I	don't recall the exact date.
15	Q	How many days did you spend in New York?
16	A	Just one day.
17	Q	Did you come in the morning?
18	A	Yes.
19	Q	Did you go back that evening?
20	A	Yes, I did.
21	Q	Did you spend a full day?
.22	A	I would say from at least 10 to 4 or 10 to 4:30,
23	something like	e that.
24	Q	I would like to go back to the time you did the
25	first rating.	Tell me how you went about doing that rating,
		-1660

.

not in February, '73, but the first time around, when you were in the New York office.

A Well, in completing, in going back and doing the rating, I went through each of the program areas, the categorical areas with the notes that I had and my memory, and discussions that we had with the town officials. I filled in the categorical areas in terms of how many points should be employed, based on the type of project, based upon planning and programing considerations, based upon health considerations and documentation we might have had from the County Health Department, based upon site inspection, of course, of the area in terms of the service area, and that was basically it.

Q Did you consult with anyone?

A Yes, I did.

Q Whom did you consult with?

A I consulted with Mr. Joe Herman, who is the financial officer in the Boston area office.

Q Boston area office?

A Excuse me, New York area office, and with, I believe at that time it was Dick Singer, who was with Equal Opportunity in the New York office. Excuse me, one other person, Mr. Vlatos, who was the Planning Officer in the New York office. He is the Planning Officer. He was the Assistant Director for Planning and Relocation.

2	Q I want you to tell me precisely, to the best of
3	your recollection, how you proceeded. Were you working off the
4	form? I'm now talking about the first time.
5	A Off the form, the rating form?
6	Q. Yes.
7	A Yes. I used the circular, the rating system
. 8	circular, a copy of the rating system, and again, based upon
9	the discussions and notes that I had I appropriately filled in
10	the points applied to each categorical section.
. 11	Q Why did you consult with Mr. Herman?
12	A Mr. Herman was the gentleman who was responsible
13	for, at the time, in the area office, for doing the financial
14	section of the rating system, and I submitted the rating to
15	him and asked that he complete his section of it and return it
16	back to me.
17	Q Did he do that?
18	A Yes, he did. "
19	Q He filled in the numbers under Financial Needs?
20	A Yes, he did.
21	Q What about Dick Singer? Why did you consult with
22	him?
23	A Under Housing Considerations I indicated to Dick,
24	again informally, in going through the project area, that I
25	was applying a few points to accessibility because of the type

2	of housing I thought it was, and he agreed it was a general
3	trend in Westchester County. It was an informal discussion we
4	had.
5	Q You were giving a couple of points to what?
6	A Under Accessibility, under the rating system.
7	Q Why?
8	A I gave zero points because by definition I felt
9	it did not meet the standards of low income housing, the servic
10	area was middle housing, basically middle to upper middle
11	income, and Mr. Vlatos I talked to concerning the planning
12	considerations.
13	Q What did you talk to him about?
14	A The specific areas of the rating system which wer
15	to be completed with the Development rep and the Planning
16	Officer, the priority and the statements of goals and objective
17	Q That is Category 1?
18	A I believe that is under Growth and Development,
19	that's right.
20	Q Do you recall what the total point allocation
21	was that you gave New Castle or King-Greeley the first time you
22	gave a rating?
23	A 41 points.
24	Q How are you so certain that that was the figure
25	you gave at the time?

2	A Because I recall that is what it was and I was
3	informed by Mr. Cruise that the rating before was 41 points.
4	Q When did he inform you of that?
5	A At the time when he called me.
6	Q He didn't call you and say, "Do you recall what
7	the rating was?"
8	A I don't believe that was the case, no.
9	Q You recall him calling you and saying, "I want
10	you to come down here."
11	A I believe the office has on file records which
12	would show
13	Q I'm talking about the conversation. You recall
14	the conversation? He called you and asked you to come down
15	and reconstruct the form and that the previous rating had been
16	41?
17	A Yes. I believe he knew the total number of
18	points, but he did not know in the specific number of categories
19	how they were applied.
20	Q In February of 1973, you came to New York to
21	perform the specific function of redoing the form?
22	A .That is correct.
23	Q Why was it necessary for you to come to New York
24	to do this?
25	A I assume that the area office felt that since I

11		
2	was involved	in doing the initial rating I had the best memory
3	and recollect	ion of what the actual rating was, and again
4	they felt tha	t they wanted me to
5	Q	Did you need the files to do the rating?
6	A	Yes, I did. I obtained all the information that
7	was available	
8	Q	Where did you do the work on this revised rating
9	A	In the New York office.
10	Q	Could you tell me how you went about completing
11	this?	
12	A	I went through the same practices as if I was
13	doing the ini	tial rating.
14	Q	Let's refer to Document number 9 there. This
15	is Plaintiffs	Exhibit 1. Is this a copy of the rating you
16	performed?	
17	A	Yes, it is.
18	Q	Could you tell me how you went about filling in
19	the form?	
20	A	Well, I had the files which were available to
21	me. I took a	a copy of the rating system and I went through this
22		of what was available to me and my recollection o
23	the project.	
24	Q	Are you certain that all the figures you gave
25		od rating were precisely the same as the figures

you gave on the first rating?

A Yes.

Q You have no doubt that you repeated it verbatim from the first report?

A No.

Q Why are you so certain of that?

A Because many of the points which were applied here are points that are clearly defined within the rating system in terms of the type of project it is, and so forth.

Q Tell me how you went about filling in this revised report in February, 1973?

A Again, I had a copy of the rating system.

Q Let's go category by category, starting with

Number 1, Growth and Development Need. You gave 5 points. Now,

I want to know how you went about figuring out that in fact you had given 5 points the first time around.

A Well, in going through the files and discussions that were available, I recalled that the project was going to increase existing area and service an area which did not have a system, because they were on septic tanks, and by definition in terms of the rating system, that would apply to 5 points on the nature of the project.

Q You recall that that must have been the figure you gave the first time?

	_
2 3 4 5 6 7 8	
3	
4	
5	
6	
7	
8	
10	
11	-
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	

23

24

25

A Yes.

Q Go to 1-B, Growth. How did you decide that 5 points was what you gave the first time around?

Westchester County Health Department, indicating the urgent need of a system there, again because of the malfunctioning septic tanks, and also in discussions we had with the town in terms of service area. There would be some single families and some commercial development within the service area of the project, so again, by definition, 5 points was applied because we felt there was an urgent need because of the health considerations.

Q How did you decide on 5 points for Planning and Programming?

A In discussions that I had with the planning officer and, again, with the town, we were informed that the statements of goals and objectives of the Area Planning Agency would be adopted by the town of New Castle.

Q In February of '73, you recalled that you were informed of that at the earlier meeting?

A I recalled we had that information at the meeting, yes, we discussed that.

Q In February, '73, did you make any calls to New Castle to determine whether or not you were correct?

-193a -

2	situation in the project area.
3	Q Did you consult with anybody at HUD?
4	A No.
5	Q How did you decide on Category A, Elimination of
6	a Potential Public Health Hazard, rather than on Categories
7	B and C in the instructions under Health Considerations?
8	A Well, I guess it probably could have received
9	B, because according to the Health Department there was a
10	demonstrative health hazard, but in the review of the site
11	inspection, even though there was some flooding and seepage
12	from the septic tanks, I felt there could have been a potential
13	health hazard that could have led to a severe demonstrative
14	hazard.
15	Q Your conclusion was that there wasn't a
16	demonstrative health hazard?
17	A No.
18	Q Your opinion was that there was no critical
19	health hazard?
20	A That is correct.
21	Q Part 5, Jobs and Business Opportunity, you gave
22	the applicant 2 points under Commercial Industrial Development
23	Would you tell me why?
24	A Because part of the service area was to include
25	a shopping and commercial facility as part of the overall

2	application.
3	Q What about the preliminary application, is that
4	supposed to be sent to Equal Opportunity?
5	A There is no official review. I don't know if
6	it is done on a preliminary SF-101.
7	Q When you fill out one of these forms, do you make
8	any investigation into the housing and land use policies in
9	a community?
10	A Well, usually under Planning and Programming it's
11	covered under the Statement of Goals and Objectives.
12	Q You don't make any specific inquiry?
13	A No.
14	MR. BELLMAN: Off the record.
15	(Discussion held off the record.)
16	Q Do you inquire, in completing these reports,
17	whether a town has any public housing available?
18	A Yes
19	Q Did you make such an inquiry when you visited
20	New Castle?
21	A I don't recall.
22	Q How do you usually make that inquiry?
23	A Usually we ask if a community has a public
24	housing, 236, elderly projects. We talk about it also in terms
25	of park or recreational facilities.
CONTRACTOR SUPPLIES	

2	Q	Was that done in New Castle?
3	A	I can't recall.
4	Q	Is that information ever reflected in the number
5	of points a c	ommunity might receive on the rating sheet?
6	A	It could be, under Growth.
7	Q	Were you aware that Urban Development Corporation
8	of the State	of New York had proposed to locate some low cost
9	housing commu	nities in nine towns in Westchester County?
10	A	No, I wasn't.
11	Q	You have never heard of that?
12	A	No.
13		MS. DAVIS: At the time, or now?
14		THE WITNESS: Well, you mean at the time the
15	rating	was done?
16		MS. DAVIS: Which?
17	Q	Have you ever heard of that?
18	A	I just heard about it now, yes.
19	Q	When was the first time you heard about that?
20	A	I heard about it when, I guess it was when I
21	came down in	February this year, that there was something about
22	the town refu	sed a U.D.C. project.
23	Q	How did you learn that?
24	A	I was informed by Mr. Cruise.
25	Q	As a resources person, do you ever turn over

EEEKMAN REPORTING SERVICE WORTH 2-5954

2	these project applications to the area office Equal Opportunity
3	officer for review?
4	A Preliminary or final?
5	Q Preliminæry.
6	A No, I never did.
7	Q What about final application?
8	A Final application, I believe there was a review
9	under Title 6.
10	Q My question is have you ever turned over a file
11	for review by Area Equal Opportunity Office?
12	A Not preliminary application.
13	Q Final application?
14	A It was done as part of the review process.
15	Q You know that files that you are responsible
16	for were processed through area office Equal Opportunity
17	Officers?
18	A Under the processing, when the application is
19	sent out for the review, one of the reviews that is done on
20	the project is done by Equal Opportunity.
21	Q Would there be a notation in the file to that
22	effect normally?
23	A I would assume so.
24	Q All other processing by other officers are
25	reflected in the way of memorandum or check-off lists, is that

2	Q What is the source of your information for the
3	25 point minimum threshold?
4	A I believe that is taken out of the Water and
5	Sewer Handbook.
6	Q Is that the handbook that is used in your area
7	in Boston?
8	A I think in terms of the handbook, the first five
9	chapters, Proper Processing, I think there is reference made
10	to 25 point minimum threshold. Also, I was informed by the
11	Resources Development representative in talking with him.
12	Q When were you so informed?
13	A Some time ago. We were just talking about the
14	rating system.
15	Q Who is the Resource Development representative?
16	A Ronald Herlet.
17	Q Mr. Mendoza, if at the time you made this rating
18	you had information that the town had turned down the public
19	housing project, would it have affected the rating you gave
20	the town?
21	A Yes.
22	Q Would it have affected it adversely?
23	A I think there would have been some changes made
24	in terms of the number of points applied in the different
25	categories.

2	Q Any specific areas?
3	A Possibly under Growth, specifically, and also
4	the possibility under the housing considerations, in terms of
5	Housing Quality.
6	Q Would it have resulted in less points or more
7	points?
8	A Less points.
9	MS. DAVIS: I have no questions.
0	EXAMINATION BY
1	MR. EELLMAN:
2	Q Tell me, if you would, how the fact that absence
3	of low cost housing, or had you been informed of the absence
4	of low cost housing or the blocking of low cost housing would
5	have affected your rating under Growth and Development?
6	A Well, under Growth and Development, you are not
7	only tied into the definition of an urgent need, but the
8	overall development of community within a two to five year
9	period, and as part of the growth and development housing is
0	an important element.
1	Q Tell me, would this be 1-B you are talking about?
2	A Yes, it would be.

Could you explain that further? Under the guide lines, the issue is capacity for future growth, and 5 points were given because the project provides for the reasonable

23

24

25

FEDERAL COURT : NEW YORK COUNTY

RACHEL EVANS, et al.,

Plaintiffs,

-against-

JAMES T. LYNN, Secretary of Department of Housing and Urban Development,

Defendant.

Federal Court Building New York, N.Y.

November 27, 1973 2:15 o'clock p.m.

Deposition of Defendant JAMES T. LYNN, Secretary of DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, by BERNARD C. FAGAN, taken by Plaintiffs pursuant to notice.

000

Beekman Reporting Service

Certified Shorthand & Stenotype Reporters

150 Nassau Street New York, N.Y. 10038

W O R T H 2 - 5 9 5 4

-1974 -

2 for plaintiff shall furnish a copy of the within deposition to counsel for defendant, without charge. 000 5 BERNARD C. FAGAN, 6 being first duly sworn by a notary public of the State 7 of New York, was examined and testified as follows: EXAMINATION BY MR. BELLMAN: 10 Q What is your name, sir? 11 A Bernard C. Fagan. 12 Where do you live? Q 13 230 South 22nd Street, Philadelphia, Pennsylvania. 14 Mr. Fagan, what position do you currently hold at the Bureau of Outdoor Recreation? 15 16 I'm an outdoor recreation planner which is a title 17 applied to almost everyone at the office at my level, anyway. More specifically, I was a project officer at the time of 18 this project's approval and more recently I have been working 19 20 on environmental impact statements. 21 What is your training, professional training? I attended and graduated from Clemson University 22 23 with a Bachelor of Science degree in Recreation and Parks Administration, and I attended Penn State University in the 24

graduate program for Parks and Recreation.

(_Q)

2	Q How long have you been with the Bureau of Outdoor
3	Recreation?
4	A Since June 29, 1972, approximately a year and a-
5	half.
6	Q Did you hold any other jobs between college and
7	going with the Bureau of Outdoor Recreation?
8	A After graduating college?
9	Q Yes.
10	A No.
11	Q What is your G.S. rating?
12	A Nine.
13	O You had responsibility for reviewing the applica-
14	tion for Open Space money to the town of New Castle, is that
15	correct?
16	A Yes. We don't refer to it as Open Space money.
17	It's Land and Water Conservation Fund.
18	Q Is that different from Open Space grant?
19	A It's very often used to acquire open spaces, but
20	we go beyond that. I believe the acquisition of Open Space
21	money applies more to HUD than it does the Bureau of Outdoor
22	Recreation.
2.3	Q What were your responsibilities as project officer?
24	A Well, the responsibilities of a project officer
25	are to review the projects as they are submitted to us by
	-199a-
	V/Onth 2.50gs

reporter mark as Plaintiff's Exhibit 4 the packet of materials submitted to the Court by Interior and B.O.R. These constitute documents numbered 1 through 12. There are a couple of additional documents, I think 11A or 8A, but we will call the total packet Plaintiff's Exhibit 4.

> (Documents numbered 1 through 12 marked as Plaintiff's Exhibit 4 for identification)

- Q Was this matter referred to you for processing?
- That is right.
- To the best of your knowledge you were the officer in charge, fully in charge of this project from the time that the application reached B.O.R.?

Well, when the application actually comes into B.O.R., we have a control officer who initially screens it, labels it or identifies it, sends out certain routine forms, for example, in coordination with the Bureau Of Fisheries and Wild Life, he acknowledges receipt of and gives it to the appropriate project officer. In this case it was me.

Can you tell me how you went about processing this application?

I reviewed the material that was submitted to me, whether it complied with the documentation requirements that we have (as I recall everything was in order) to see whether there were any discrepencies in the information provided in

24

25

2	the application, whether there were any readily identifiable
3	problems with the project, and I determined that an inspec-
4	tion was necessary, and the inspection was carried out.
5	Q When did you conduct the inspection?
6	A On December 19, 1972.
7	O What document number did you make reference to?
8	A Document number 6.
9	Q Did you have any conversations with anyone at the
10	State or local level prior to making your on site inspection?
11	A Well, I would have been in touch with the State
12	to tell them that it was my intent to make an inspection and
13	to ask them to arrange for someone to be there and show me
14	the site, which they did. I don't recall any other pertinent
15	conversations.
. 16	Q Did you ever have any other contact with the
17	State or local people after the inspection?
18	A I don't recall any, offhand.
19	Q Generally, the matter was processed, the papers
20	submitted and you had your on site inspection?
21	A Generally, yes. There may have been some minor
22	problems that were straightened out through telephone calls
23	and conversation.
24	Q By whom?
25	A By myself. — 1996a —

2	Q Basically, did your inspection involve simply a
3	review of the site?
4	A Right.
5	Q Did you have an opportunity to drive around New
6	Castle at all?
7	A Only in a cursory fashion. I'm not sure exactly
8	what the boundaries of the town of New Castle were. I recall
9	exiting on a parkway or something and seeing a Readers Di-
10	gest Building there and I did then find out where the town
11	hall was and I went over there to meet my contact who was
12	Mr. Soyland. Then, of course, in traveling to the site we
13	passed through part of the town, I suppose.
14	Q What responsibilities did you have or do you have
15	when processing an application of this nature with respect
16	to the Federal Civil Rights Laws and Regulations?
17	A Well, as far as Title 6 goes, our responsibilities
18	are to see to it that the applicant has properly executed the
19	Form 1350, which is assurance of compliance with Title 6.
20	In signing the project agreement they agree to other civil
21	rights related points.
22	Q Project agreement? What number document is that?
23	A Document number 8.
24	Q Who signs off on this project agreement?
- 11	

That is the State Liason Officer.

		The second secon
	2	Q Does the town itself sign anything?
	3	A The only thing the town itself signs is the assur-
	4	ance of compliance with Title 6 which is the 1350 Form.
	5	O I think that is attached to the application. What
	6	in this project agreement sets forth any additional civil
	7	rights requirements?
	8	A On B2 there are a series of provisions which re-
`	9	quire compliance with regard to construction contracts. Un-
	10	der item I, I2 requires that the operator maintained as pur-
	11	suant to the agreement and according to the standards set
	12	forth in the manual which also specifies or reiterates, cer-
	13	tain compliance requirements. Section J on non-discrimination
	14	again assures compliance with non-discrimination, with Title
	15	6 of the Civil Rights Act.
	16	Q The signed application comes through the State
	17	Liason Officer, is that correct?
	18	A That is correct
	19	Q What role does he play in all this?
	20	A He plays a very important role. He does the ini-
	21	tial screening and the establishment of priorities for pro-
	22	jects as they are sent to us. Every State is apportioned so
	23	much money, so many millions of dollars from the Land and
	24	Water Conservation Fund. The State Liason Officer will screen
	25	the project proposals and determine which ones will be sent to

2	Q By your office.
3	A Yes.
4	Q And you mention the latitude and longitude. Do
5	you know what else is filled in by your office?
6	A Well, the date received, for instance the State
7	of New York would not know what the date received would be
8	when they sent it. I believe we fill in the project number.
9	We fill in the Congressional district, the geographic code.
10	MISS DAVIS: I point out that on top of the box
11	that includes the information we have been discussing
12	is a notation that says, "For B.O.R. use only".
13	Q The implication is that Box 11 was filled in by
14	Aldrich's office?
15	A Yes. That's what the implication is.
16	O There is an additional information report attached
17	toward the end of Document Number 3. Who prepares that?
18	A That is prepared either by the State or the
19	applicant. You see, we sometimes receive projects from the
20	State itself or State parks, and so forth, and sometimes the
21	State communicates through the State Liason Officer, and I'm
22	not sure who prepared this additional document, whether it
23	was State personnel or local people.
24	O In processing this application did you make any

effort to determine the nature of the housing practices in

2	New Castle?
3	A I didn't, no.
4	Q Did anybody in your office, to your knowledge?
5	A Not that I know of.
6	Q Was any effort made to determine availability of
7	low and moderate income housing in the area and in the town?
8	A I don't know.
9	Q Did you?
10	A No, I didn't.
11	Q To your knowledge, did anyone else in your office
12	make such an inquiry?
13	A Not to my knowledge.
14	Q. Was any inquiry made during the processing of this
15	application as to the land use practices and zoning practices
16	of the town of New Castle?
17	A By whom?
18	Q By your office. "
19	A Not to my knowledge.
20	Q Were you aware that the New York State Urban De-
21	velopment Corporation had proposed, as part of a general plan
22	for Westchester County, to build low and moderate income hous-
2.3	ing units in the town of New Castle?
24	A I wasn't aware of it.
25	Q Are you aware of any policies within your Departmen

relating to the processing of grant applications such as this one to affirmatively promote low and moderate housing opportunity in a given area?

5

4

A To promote housing opportunities? I'm not aware of any program that we have.

7

3

6

Q With respect to the Title 6 compliance assurance, do you have any procedures for following up to determine whether or not there is indeed compliance after a grant is awarded?

10

11

12

13

14

15

A Personnel in our office occasionally make post completion inspections of a project site, and if it is apparent to us during these inspections that the community or the State is not complying, then we of course could take appropriate action. The O.E.O. within the Department of Interior takes a more active role in aggressively investigating these things.

16

17

18

il

O.E.O. is Office--

19

A Office of Equal Opportunity.

20

Q When you say it takes a more aggressive role, can

21

you tell me what, to your knowledge, they do?

in the State expressly for civil rights compliance. If we

Periodically they go out and survey projects with-

24

made a project inspection it would be expressly for civil rights compliance but it would be for a number of things. A

rights compliance but it would be

A COPPORTUGE

2 the various applications as to which grants, which applica-3 tions will be approved? Well, the responsibility for initial screening of 5 projects and establishment of priorities lies almost entirely 6 with the State Liason Officer. We never see a project unless 7 it has gone through his office first and he has determined that it meets the requirements of our program and his program 8 9 for administrative--10 Q He operates within the Governmental amount of 11 allocation? 12 A The apportionment for the State, yes. 13 He would assign priorities based upon the amounts of money he had allocated? 14 Well, I don't think his priorities are based on 15 the amount of money he has, but other criteria for judging 16 17 the relative value of a project. 18 He is limited? 19 He operates within the constraints of his apportion-20 ment, yes. 21 Q. The State Liason Officer operates pursuant to a state outdoor recreational plan, is that correct? 22 23 That is correct. A 0 What is a state outdoor recreational plan? 24 We usually refer to it as Statewide Comprehensive 25 A

Outdoor Recreation Plan, SCORP, of course, we call it and the SCORP is a required element for our State to be eligible for fund assistance. Our State may not submit projects to the Bureau without first having developed a SCORP.

Q What does the so called SCORP attempt to do?

A Well, it attempts to provide a framework on a Statewide level within which the planning agency may access what it has to work with, inventories, existing facilities and plans for a future acquisition and development of park and recreation areas.

O Does this plan ever consider the impact of creation of recreational space on limiting housing opportunities?

A The fact that creating recreational space will thereby curtail housing opportunities, is that it?

O Yes.

A I don't know whether they approach it from that point of view.

O The plan for New York, how long a document is that?

A Well, the plans are being continually updated, of course, with changing land use practices and population trends and so forth. It's about, I would say, a 200 page document.

O How is it maintained, a looseleaf volume?

A No, it's bound and published and the State Planning Agency is responsible for putting it together initially

and keeping it updated, but it's not in a looseleaf form.

Q Is it fair to say, Mr. Fagan, that based upon review of this file and what you have told us today that in processing the application from New Castle, the only civil rights effort or compliance checks that your office did was to make sure that New Castle had signed the Title 6 assurances and signed the agreement which has the references to various civil rights policies?

A With the exception that they are required to submit their proposal through the clearing houses for their review.

No, aside from submitting to the clearing houses, were there any other steps taken in terms of Civil Rights enforcement, affirmative action or compliance of any type conducted by B.O.R.?

A To my knowledge, no.

O Returning to the matter of the clearing houses, what is your understanding of the steps that must be taken by an applicant before the Bureau can award that grant?

A They are required to submit a copy of their proposal to the State Clearing House and to the Regional and Metropolitan Clearing House as it applies. Some regions of the State will not have a Regional or Metropolitan clearing house.

Q In this area is that the Tri-State Regional Planning



10 M 200 - 2074 -

2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	

15

16

17

18

19

20

21

22

2.3

24

25

A Usually judging from the magnitude of the project, the nature of the project and the type of surrounding development and non-development and the availability of other recreational opportunity in the area, so one can make a pretty good judgment as to who it is that is primarily using the area. Of course, a playground you cannot expect to be used by out of State visitors or anything like that.

O In processing this application did you make any efforts to determine the racial makeup of the population that would be serviced by the project?

A No, I did not.

MR. BELLMAN: No further questions.

MISS DAVIS: I have just a couple of questions.

EXAMINATION BY

MISS DAVIS:

O Mr. Fadan, in answer to a question you spoke about the desirability of balancing open space with development. You were going to continue that answer saying particularly something, and another question intervened. Do you recall what the rest of your answer would have been?

A It was probably a reference to the nature of the area to be acquired. If an area is almost totally unsuitable for sound development it does not make sense to develop on that land, and in this case it wasn't really land. It was

3

4

5

6 7

8

9

10

11 12

13

14 15

16

17

13

19

20

21

22

23

24

25

more of a marsh. These areas are necessary for wild life preservation and they are not amenable to most types of development, housing, for instance.

The State Comprehensive Plan, does that reflect civil rights considerations as far as you know, either directly or through concern with income levels or urban areas or things of that sort?

To my knowledge not directly. Indirectly, however, it certainly does respond to concepts of that nature. The planner will, in evaluating what is available in terms of outdoor recreational opportunity, he will assess that and determine from that in which direction more opportunities are needed. We encourage that where there is a lack of opportunity, of course, the plan should reflect a need for establishing priorities that would fill that need. In urban areas where you traditionally have a lack of adequate open space and recreational opportunity you try to encourage through the State Plan the provision of more opportunities in urban areas. That is the direct way in which I would say it would respond to those concerns.

Continued on

next page.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RACHEL EVANS, et al.,

Plaintiffs,

-against-

JAMES T. LYNN, Secretary of Department of Housing and Urban Development,

Defendant.

Federal Court Building Room 331 Foley Square, New York

November 30, 1973 11:15 a.m.

DEPOSITION of the Defendant, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, by MAURICE L. ARNOLD, taken by the plaintiff, pursuant to notice.

Beckman Reporting Service

Certified Shorthand & Stenotype Reporters

150 Nassau Street

New York, N.Y. 10038

WORTH 2 - 5 9 5 4

2	EXAMINATION
3	BY MR. BELLMAN:
4	Q What is your name, sir?
5	A Maurice D. Arnold.
6	Q Where do you live?
7	A My home address is Whiting, Vermont. I have
8	no street address.
9	Q Mr. Arnold, what is your professional position?
10	A I'm a Regional Director of the Bureau of Outdoor
11	Recreation, Northeast Region, located in Philadelphia, and
12	the Bureau of Outdoor Recreation is an entity in the Interior
13	Department.
14	Q You stated you live in Vermont?
15	A Yes.
16	Q Do you have a residence in Philadelphia also?
17	A I have an apartment in Center City.
18	Q How long have you been-Regional Director of
19	B.O.R.?
20	A I have been Regional Director at two different
21	posts, in Philadelphia since August 1, 1972 and in Denver
22	from December 1, 1966 to the time that I went to Philadelphia.
2.3	Q Could you briefly tell me the various program
24	activities that B.O.R. Is responsible for?
25	A Yes. We have probably at least twelve separate
	-2116-

incorporated or unincorporated place of 25,000 inhabitants or more. All other projects are rural. That is not a census definition is it?

A Yes, it is. It's one of them. You are probably thinking of the broader one, the one more frequently used which defines as urban those places with populations of 2,500 or more and the urban areas as meaning areas which are contiguous to large population elements.

Q Why is New Castle, in your estimation, urban?

A Because it is a satellite community, part of the New York City Metropolitan Area.

Q With respect to the grants under the Land, Water Conservation Program, does it make any difference as to the processing of an application whether an area is deemed rural or urban as far as B.O.R. is concerned?

A I can't answer that question directly because the answer is yes and no. We ask the States to give priority consideration to meeting the needs in urban areas. The priority system should take into account that guideline and of course, New York State's priority guidelines do in fact do that, do in fact take into account urban needs.

The applications which come in to us should reflect, do reflect the numerical rating given to a variety of factors of which urban needs would be represented perhaps in one or two or three elements. I'm not certain exactly

23

24

25

than one.

2 about the ratings involved. Then, the applications that 3 result from the rating should fall within the top priority. In New York State's case, for example, the priority system 5 runs from zero to fourteen. The cut-off is five and the 6 application that comes to us would not be considered --7 0 Five to fourteen, you say? 8 A Yes. Where are these priority ratings? 10 Well, these numerical ratings given applications 11 by the State of New York result from the application of 12 a number of different factors. 13 What was the priority rating given to the New 14 Castle application? 15 I'm sorry, I don't know. 16 MR. BELLMAN: Off the record. 17 (Discussion off the record.) 13 Plaintiff's Exhibit 4 contains a document attached 19 to the application forwarded by the State to B.O.R. entitled 20 New York Statewide Comprehensive Outdoor Recreation Plan Priority System, which lists a total rating of, I believe, 22 nine. There are ten elements there but some can get

more value. For exampee, in 2. In 2, you can rate more

we become involved in the process long before the application hits our desk and it is our practice to actively encourage the State to find redress to the recreational problems that exist, to try to dispassionately assess needs and then to set about meeting those needs, and existing housing patterns and desirable housing patterns ought to be a factor in the planning process in assessing needs and we attempt to encourage consideration of all community needs and not just to leave ourselves merely concerned with recreation, because it's important to the fabric of this system.

We are aware of the several actions that have to do with the promotion of civil rights and social concerns and naturally I feel that we comply with all of them.

Bringing about redress is, of course, a large part of the planning process. Attempting to assess needs is a part of changing attitudes over a period of time and has partly to do with trying to understand needs and assessing them adequately from a recreational point of view and from other points of view.

Q Maybe you could give me a more specific answer as to what B.O.R. does do to implement Title 6 of the Civil Rights Act of 1964 and the affirmative action sections of Title 8 of the Fair Housing Act of 1968?

BREKMAN A IPOPTING & TRVICE

- 213a-

21.

9 10 11

8

14

13

16

17

18

20

21

22

24

2.5

Title 6, first, the States and local governments are under a number of policy strains which I believe have already been explored including the requirement that areas must be accessible and available to all regardless of color, place of origin and race. Then, the areas need to be available to all members of the public who present themselves and who meet the standards that normally apply to users of an area in question. When an applicant applies to us the applicant must sign a statement of assurance that he will comply with Title 6 of the Civil Rights Act. The inspections take two forms. First is the regular inspection which is performed by us and by the State organizations under guidelines from us. Where site visits are made an attempt is made to assess, among other things, the kind of users and the kind of discrimination, if any, that exists, and from that, of course then, action is taken. We have a broader program that is aimed specifically at the enforcement of Title 6 and that is administered out of Washington by the Office of Equal Opportunity.

We make two kinds of inspections, one is inspection on the State program, as such, to determine what sort of affirmative actions are taken, what sort of appearances are there, and you can get into such matters as the staffing in the State offices with whom you deal. In other words,

you might call that a program inspection. The second kind of inspection, the inspectors go to the site and they attempt to assess the site itself and attempt to assess the users that come to it. How well used the area is, whether or not there is any evidence of discrimination among users.

Q That would be after the grant had been awarded, is that correct?

A That is right. I have dealt with it before, as to the application process. Now, I'm dealing with the after the fact inspection question. I think I have dealt with the primary Title 6 activities.

Q Before you go to the Fair Housing Law, let me ask you, when you state that B.O.R. is concerned that the recreation area be accessible to all without regard to race and other --

A Yes, accessible and available.

Q Without regard to race, what factors are you concerned with with respect to accessibility?

A Well, I can't really competently answer all aspects of that question. We have people who make it their job to look at that. I can give you only a general answer. We are concerned about roadways. We are concerned about transportation systems. We are concerned about the kind of obstacles that might be placed to prevent the people from

coming in. I'm talking about physical obstacles and that sort of thing under accessibility. As to availability, you concern yourself, when you go to a place and you look at the people, you can determine the kinds of users that you have by looking at them and who is there. Part of the evidence would be the kind of people that use the area.

Now, that is only part of it. If you are dealing in an area like this one, which is a swamp and would presumably be devoted greatly to nature study you are, of course, for the most part attempting to control use by numbers. Of course, that is a qualitative thing. It has nothing to do with kinds of people or income of people who might visit it. I think these are some of the important considerations.

Q Is it fair to say then that with respect to accessibility you are not concerned necessarily with the housing patterns maintained or housing policies maintained by the community in which the facility is located?

A Well, we are dealing with Title 6 thus far and Title 6 deals mainly with the area itself and with the practices with respect to use of the area.

Q When you say area itself, you are talking about the recreational area itself?

A I'm talking about the land, yes.

2160-

O Then, with respect to my question it would be fair to say with respect to Title 6 that in the question of accessibility you are not concerned with housing patterns in the jurisdiction where the recreational activity facility is located?

A Well, to say not concerned I think would put it far too strongly because I do know that the inspectors who come from Equal Opportunity might make notes on those questions and give their comments to those who would be concerned.

Do you know of any specific policy within the field of outdoor recreation which could lead to the barring of a grant to a community for recreational space assistance because that town maintains restrictive housing policies or discriminatory housing policies?

A No.

Q Could you turn, then, to the Fair Housing Law?

A Title 8 of the Fair Housing Act, 1968. The lead role in enforcement of that act was the Department of Housing and Urban Development and we believe that we have followed assiduously the guidelines given us. In the first instance we place a great deal of emphasis on the planning process and we ask the States to consider needs of the people and to have action programs which get at these needs. We ask

3

4

5

6

7

8

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

Arnold and I believe, though I could be mistaken, that about all the community services and about all of land uses would be a consideration. Just so that the record is clear, I think I have asked this once, but I will restate it. There are, to your knowledge, no written instructions from B.O.R. to the State Recreational Department or State liaison officers which make reference to Title 8? I know of no such instructions.

Have you personally ever consulted with the Regional Administrator of HUD for this area or the Regional Administrators covering the areas of your jurisdiction to coordinate your policies with respect to Title 8?

No.

Have you ever been contacted by HUD officials operating in their capacity as coordinators under Title 8 with respect to B.O.R. policies and that statute?

No.

Q Were you personally aware at the time that New Castle and the State of New York were applying for the grant in question that such an application was pending?

Was I personally aware that such an application was pending?

Yes, prior to the controversy created by the

25

SELECTED EXHIBITS

1.	Letter to District Court from United States Attorney	220a-221a
2.	HUD Rating Sheet on New Castle Sewer Grant	222a
3.	Instructions for Completing Sewer Grant Rating Sheet	223a-229a
4.	State Officer's Rating Sheet on New Castle's Outdoor Recreation Area Grant	230a
5.	Letter from Westchester County Department of Health on New Castle Sewer Grant	231a-232a
6.	Portion of New Castle Application for Sewer Grant	233a-234a
7.	On-site Inspection Report by BOR for New Castle Outdoor Recreation Area Grant	235a

PD: la

ROVIES, ON

November 8, 1973

Hon. Milton Pollack United States District Judge United States Courthouse Foley Square New York, New York 10007

RE: Evans, et al. v. Lynn, et al.,
73 Civ. 3475 MP

Dear Judge Pollack:

I wish to bring to Your Honor's attention information concerning the record of the grant of the Department of Housing and Urban Development which was provided to Your Honor and the attorneys for plaintiffs, specifically document No. 9 of that record.

I have today learned that document No. 9, the HUD rating sheet, is a reconstruction rather than the original document. I am informed that in February of 1973 the original document was lost. Mr. Robert Mendoza, who prepared the original following a field trip to the site, was asked to reconstruct the document which is now part of the record. The dates which appear on document No. 9 are those of the original rating sheet.

Mr. Mendoza will be available for deposition concerning both the original and the reconstructed documents.

- 220a -

21.

(Sie

This information has already been provided by telephone to Lois Thompson, attorney for plaintiff.

Very truly yours,

PAUL J. CURRAN United States Attorney

By:

V. PAMELA DAVIS
Assistant United States Attorney
Telephone: (212) 264-6333

cc: Lois Thompson, Esq. 150 White Plains Road Tarrytown, New York 10591

> Robert J. Feldman, Esq. Wikler, Gottlieb, Taylor & Howard 40 Wall Street New York, New York 10005

O.S. DECKETHER OF ROUSING AND URBAN DEVI COPILIED WATER AND SEWER FACILITIES GRANT PROGRAM PROJECT RUMBER: RATING REPORT USF-101-02-31-11 CERERAL I. HAGE OF APPLICANT 2. PROJECT DESCRIPTION -Town of Hear Coster Spirites Ewer Collection B. RUMERICAL RATING I. GROWTH AND DEVELOPMENT A. Need B. Growth C. Planning and Programing D. Clearing-House Corments II. PENNICIAL IMED Sub-96bal A. Ability (Reed for assistance) B. Relative Income Hon-Federal Via Sub-Total III. HOUSING COMSIDERATIONS A. Project Reeded for Housing - Housing Quality B. Accessibility AV. HEATING Sub-Total (Elimination of P.A. Bazard) V. JOB AND PUBLICES OF OFFICE LOS A. Comfreigl Industrial Development B. On-The Jobix Praining Provided C. Job Opportunities for Under and Unemployed D. Erell mannece reruseipation E. Minority Business Participation VI. COMMENTY DEVELORATE (Project Recessary for Undertaking Other Publically Supported Community Development Activities) C. COMMENTS: TOTAL D: RECOMMENDATIONS: 1. Based upon a rating of 24/ the proposed applicant [Bappears, appear, to meet the minimum value required for further processing. . does not CONCUR:

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CIRCULAR

CD 6220.2A

PLANHTIFF'S EXHIBIT STRIBIT ST

Cancellation
Date: June 30, 1972

SUBJECT: PROJECT EVALUATION SYSTEM

1. Purpose: This Circular provides the basis for rating and ranking preliminary applications (SF-101) for assistance under the Water and Sewer Facilities Grant Program for which the Department has jurisdiction.

2. Definitions:

I. Guiding Orderly Growth and Development

- A. A service area is the total geographic area for which the applicant has legal responsibility to provide services and facilities.
- B. Rehabilitation includes only major items of construction and does not include normal maintenance and repair.
- C. Increasing the area served is the provision of facilities in those portions of the service area which are not currently part of the existing system.
- D. A basic system provides facilities within the service area where no facilities currently exist. Existing or proposed supportive facilities, e.g., water supply or sewerage treatment, may be provided by other units of government.
- E. Reasonable foreseeable growth needs are as defined by the applicant and reflected in the functional planning and programming for the area.
- F. Urgent need is defined as a situation which, if not corrected in the nest five years, can be expected to result in a critical need.

A critical need is one that should be addressed immediately, ie., a desperate need for water including the need to import water, controlling frequent inundations, or eliminating sources of epidemics.

Financial Need

- Ability to finance the project on the basis of revenue bonds is computed at six percent interest over 25 years. If the estimated net revenue in an average year exceeds the total debt service costs for that year by a factor of 1.25, it is assumed that the project can be financed without the requested Federal aid.
- Relative income of the area to be served is obtained by utilizing the City-County Data Book or other census data. In those instances where the median family income for the area as determined from the source material appears inconsistent with the Department's knowledge of the community, utilization of adjacent area incomes are to be employed.
- Financing by other units of governments includes grants, loans, or contributions to the construction of the project by units of general or special purpose governments other than the applicant.

Housing Considerations

- Decent, safe, and sanitary housing is as defined by the applicant in accordance with housing standards in the area in which the project is to be located.
- Low and moderate income housing is defined as housing B. on the open market that is priced equal to or less than the resultant of multiplying the 235-236 maximum income for a family of four, (HUD Handbook 4400.30) for the county in which the project is located by a factor of 3, and for rentals, an annual rate including utilities, etc., equal to 1/3 the 235-236 income
- Nondiscriminatory means free of legal or social constraints arising from race, creed, color and national origin.

IV. Health Considerations

- A. A potential public health hazard is a situation which if not corrected can be expected to result in a dangerous lowering of environmental quality and health standards. This includes malfunctioning septiments, polluted individual wells, or areas subject to inundation not more often than every five years but at least once every 10 years.
- B. Demonstrated public health hazards include sources of disease of epidemic proportions as established through epidemological studies and reports, contamination of domestic water sources from all causes, the need to import water for whatever cause, and the inundation of the area more frequently than every five years.
- C. A critical public health hazard is a demonstrated public health hazard which must be resolved immediately including the desperate need for water, control of demonstrated vectors, and the inundation of the area more frequently than once per year.

V. Local Job and Business Opportunity

- A. On-the-job training is defined, as union or government sponsored apprenticeship or similar training programs.
- B. Small businesses are those suppliers or contractors whose contractual abilities are liminted to \$125,000 or less.

VI. Community Development

- A. Community Development activities include those publicly supported physical development activities and those related social or economic development activities being carried out or to be carried out within a reasonable period of time in accordance with a locally determined or areawide plan or strategy.
- B. Factors taken into consideration should include the project's responsiveness to locally concerned needs and objectives, the economics possible through coordinated or joint action, and the support of the approprivate unit(s) of local general purpose government.

Water and Sewer Project Selection System

- Note Points are to be awarded in the following categories only ... where the statement applies specifically to the project.

 Where no statement in the category applies, no points are awarded.
- I. Guiding Orderly Growth and Development

(The value of this category is the sum of the values under A through D)

- A. Service Area Need (Select only one)

 - is to increase the existing area served with or without rehabilitation of the existing system; ----5
 - 3. is to provide a basic system for a community which is presently unserved;-----10
- B. Capacity for Future Growth

 - 3. the project provides for the reasonable foreseeable growth needs of the area in addition to meeting an immediate critical
- C. Planning and Programming

The goals and objectives statement prepared by the areawide planning organization has been endorsed or adopted

	1.7	10.80		,			*	70 m 20	
Appendi	/ ·								
. Appendi									
i vija	whi	ch the	proj	ect is	locat	ted.			e area in
Þ.	Sta	te and	Regio	onal/M	etrope	olitan	Clear	ing-ho	use Concern
	1.	If of metrop	high olita	prior an pro	ity fo	r sta	te or	region	a1/
. II. Fin	ancia	al Need	l .						
(Su	m of	A thro	ough (c)					
. A.	The Fed	projec eral as	t car sistar	not b	e fina	nced	withou	t the	requested
В.	com	ject as	meas o the	sured e medi	by the	medi	an fam ncome	ily in of the	d by the come when state in
•									2
	2.	•							4
	3.								6
	4.	501 -	1500	below					8
	5. 1	1501 -	or le	SS					10
c.	Non	Federa	1 Fir	ancia	l Aid		•		
	(Sur	n of 1	and 2	?)					
•	1.	State provid	assis	tance	(gran	t and	or loct fin	an) is ancing	being3
	2.	Units are pr projec	ovidi	ng fi	ent ot	her the	han th istanc	e appli	icant the
III. Hou	sing	Consid	erati	on	•	•			

2274 -

(The value of this category is the sum of the values earned under A and B)

	Α.	(value is sum of items)	
		1. Maintenance of existing decent, safe and sanitary housing2	
		2. Maintenance of existing or assistance to proposed decent, safe, and sanitary low and moderate income housing3	
		3. Assistance for significant areas of housing that is less than decent, safe, and sanitary2	
	В.	Accessibility	-
		Percent of housing in project area that will be accessible on a nondiscriminatory basis to families and individuals with low and moderate incomes.	9
		1. 81-100 %10	
		2. 61-80 8	
		3. 41-60 6	
•		4. 21-404	
		5. 20% or less 2	
٧.		1th Considerations lect only one)	
	Pro	ject necessary for:	
	A.	Elimination of a potential public health hazard6	
	В.	Elimination of a demonstrated public health hazard12	
*	c.	Elimination of a critical public health hazard18	•

V. Local Job and Business Opportunity (Sum of A through E) Project needed for existing or proposed commercial or industrial development -----During the construction phase of the project on-the-B. job training activities will be provided ----- 2 C. The project will provide job opportunities for under and unemployed persons ----- 2 The project has provisions for small business D. participation ----- 2 The project has provisions for minority business E. participation ----VI. Community Development

The degree to which the project is necessary for undertaking other publicly supported community

development activities -----

-2294-

REW YORK STATEWILE CO REHEMSIVE OUTDOOR PECKEAT I PLAN, PRIOPTY SY.	·
Park I.D. No	(5)
Park Hame Turner Swapp	(26
County/ECD Westchester / New Castle (25)	
Land Acquisition Cost	
Acres Acquired	
Construction Cost	
Total Proposal Cost	
Added Capacity:	
Day-Use	
Outdoor living	
Other (specify)	
1. Statewide and Local Open Space and Recreation Plans 4) Contributes to implementation of plans 0 of only marginal contribution SCORP Map #1	
2. INDEX OF RELATIVE INTENSITY OF NEED (gound to nearest whole number)	
1990 forecast use/capacity for relative measure of major project activity (use all proposed activity	
thru 9 all other values = 0) 1.4 X 2.4 table 1)	3
3. LENGTH OF SHASON	
• +1 Extends system's operational season • Does not extend system's operational season	
-1 Only reinforces peak-use periods	
4. SAFETY +1 Make the site safer (i.e., added lighting)	
O Does not substantially affect safety Creates a potentially hazardous condition	
5. ADDS TO CAPACITY AND/OR UNIQUE SLEVICE PROVIDED	0
+1 Substantially increases capacity of system and/or provides unique service	
O No substantial added service	
. SOCIAL AND ECO. COMIC FACTORS	
2. WINDERY OF PERULATION TO BE ETHOUSE	
+1 A wide spectrum (age, income, race) of population reached O Benefits confined to a limited group	
2. CONSISTENT WITH EXISTING PUBLIC AND PRIVATE FACILITIES	
O No Conflict -2 Will compete with existing facilities or will tend to	
inhibit expansion of private supply to meet recreation demand	
41 Will be of substantial importance to local economy	
O.Only of marginal value to local economy	0
 TIME SPECIFICITY OF PROJECT (ie, land acquis. in develop. area) Heeds to be done now or new stage of on-going 	
O Project can be postponed	1_
1. ENVIRONMENTAL CONTRIBUTION 12 Protects or improves needed ecological resource	
41 Enables clearer perception of ecological processes	
O Causes little enhancement -1 May cause some environmental problems	
-2 Conflict with ecological, mistoric +/or environment	
	٠.
ATTACHMENT & Land and Water Conservation Fund TOTAL	

()

_230a-

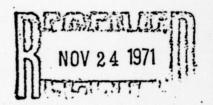
County of Westchester

DEPARTMENT OF HEALTH
County Office Building

White Plains, N. Y. 10601

November 22, 1971

JACK J. GOLDMAN, M.D.



Mr. John F. Reed, Jr., Supervisor Town of New Castle Town Hall 200 So. Greeley Avenue Chappaqua, N. Y. 10514

> Re: King-Greeley Sewer District New Castle (T)

Dear Supervisor Reed:

COUNTY BOARD OF HEALTH

ES M. JONES, M.D., PRES.

ARTHUR H. DIEDRICK, M.D.

P. BRADLEE COAL

LOUIS A. DRUSS
MRS. GRACE S. HALLOCK
LOUIS P. KURTIS
JOHN J. VESCE, M.D.
EDWARD WILLIAMS

CLIFFORD T. WEIHMAN, VICE PRES. MRS. JOHN T. BENJAMIN, JR.

Reference is made to your letter of October 1, 1971 relative to the proposed design and construction of a sanitary sewer system to serve the King-Greeley Sewer District.

Information submitted with your letter has been reviewed in light of the need for such public sanitary sewers in the subject area.

It is noted that the area under consideration is generally zoned for 1/4 and 1/2 acre properties; many of which contain residences at least 10-15 years old, or older.

A review of the records of the Westchester County Department of Health for the past 10 years shows an increasing number of investigations of suspected and confirmed separate sewerage system failures in this area.

Since the life of a properly designed and constructed separate severage disposal system is taken as 15-20 years, with proper maintenance it can be expected that the number of failures of systems in the area will increase in the future.

Provision of a public sanitary sewerage system, to replace separate sewerage disposal facilities, can provide, in addition to other benefits, better and more reliable domestic waste disposal facilities and elimination of the nuisance and health hazard conditions that can be created by malfunctioning separate sewerage systems.

The King-Greeley Sewer District is tributary to the Saw Mill River Trunk Sewer operated by the County of Westchester, which carries untreated sewage to the Yonkers Joint Sewage Treatment Plant. Site work preliminary to enlargement and upgrading of this facility to provide for secondary treatment of sewage is currently underway.

-23 a-

...cont....

public sanitary sewers in the King-Greeley Sewer District; subject to compliance with the provisions of Article 12 of the Public Health Law, and other applicable rules and regulations. Very truly yours, Jack Goldman, M.D. .Commissioners of Health JG:rr cc: W. Schlickenreider, NYSDEC -O. Soyland, P.E. White Plains Regional Office, NYSDEC W. Borghard, P.E., WCDEF C. Weber, P.E. Peekskill Field Office DATE ZE 17. 67 in 47:" V:3 A... T.42

The proposal is in accordance with the Comprehensive Plan for Sewerage

In light of the above, the Westchester County Department of Health strongly supports the proposal of the Town of New Castle to provide

November 22, 1971

Mr. John F. Read

Facilities for Westchester County.

S. Department of Housing and Urban Development Region II	ent DEAFT INVANCE WORKSHEET
retructions: Prepare in original and I copy. Tice with application or proposal, and retain ach additional sheet, (1) show name and leading item number.	n coly. And additional sheets if heeded.
. Applicant/Sponser	D. HGD Program
KING-GREELEY SANITARY SEWER DISTRICT	WATER AND SEWER FACILITY GRANT
KING-GREELEY SANITARI SEWEN 220	
	E. Location of MUD Aren/Insuring Office
. Aderess (Include zip code)	(City)
200 South Greeley Avenue	New York Area
Chappaqua, New York 10514	
. Tolophono (Include area code)	F. Office of Hanagement and Ludget
914-CE 8-4771	Circular A-95 Review:
. Does proposed project or activity require	Circular A-95 review? X /yes / /no
. If F.1. is yes, has the cognizant A-95 cl	caringhouse been notified of the proposed (x /yes /_/nc
roject or activity?	7.2
project activity?	mented on environmental aspects of proposed /x/yes //no
orkeheet. Filed with Preliminary Appropriate of proposed project or activity Portion of the Hamlet of Charles	dated Sept. 1, 1971) appaqua, Town of New Castle
scale, cost level, and other pertinent de	terals and connections to a Westchester
hauards and all deviations from applicate aspects, etc. Invironment includes phys. The area served is a high density z saturated with residential establishment buildings, churches, library, school facilities are 40 to 50 years of agreement of systems comprise of faulty cesspool lands of small size & soil of poor	le HUD policies and standards; pollution ical, social, and aesthetic dimensions) coned area basically completely shments, business enterprises & public ols, etc. The majority of residential, ge & older. The present sewerage disposals & septic systems on over-saturated sewerage disposal characteristics & for expansion. The faulty systems are very land & creating a public nuisance &

I. Adverse environmental effects which cannot be avoided (identify the adverse environmental effects which cannot be avoided should the proposed project or activity be implemented) The sewer main trench and alignment will require at certain locations - the cutting of a narrow lane in wooded areas. This will be given attention in the design layout to keep the needed cutting of trees and brush to a minimum.

The alternate to the proposed design would be to keep the sewer line in the Town right-of-ways. The economy of this design would not warrant it. The terrain would require excessive trench depth, needing shoring, and special equipment.

Short-run/leng-run relationships (that is relationship between the proposed short-run use of the environment and the maintenence of long-run productivity? What proposed project or activity were implemented?).

This project would be classified as a long-run program. The area is almost entirely saturated with homes on lot sizes less than required zoning. This indicates, in itself, that there is little room for new building and expansion.

project or relivity? Identify known or potential exposition groups to the proposed. The proposal was presented to the area people. It was accepted in ably voted at a 3 to 1 vote. No group protests of any size were received.

i. Certification

The Applicant/Spensor identified in Block A hereby certifies that the information furnished in the draft environmental clearance worksheet is true and accurate to the best of (his) (its) knowledge.

(Date) 72

Levy J. Other

SUPERVISOR - TOWN OF NEW CASTLE

(Title)

1-1	O ON-SITE HIS PORT O
1.	Type: Pre-paperovel /
_	Progress Final Date: December 19, 1972 Project #: 36-60232
	State: New York Project Title: Turner Swamp
	Project Period: November 15, 1972 to Dec. 31, 1974 A D [C]
2.	Inspector B. C. Fagan Accompanied by Oscar Soyland
	Title Outdoor Recreation Planner Title Town Engineer
	Agency BOR - NERO Agency Town of New Castle
3.	Prior Inspections: Date May 13, 1971 Type Pre-acquisition 7 St7, Ref
	Date St., Reg
4.	Findings:
•	from Hardscrabble Road and Oak Hill Road. No environmental intrusions apparent. The site seems, in general, to provide excellent wildlife habitat and the proposed impoundment should enhance this quality. I think the site
	is suited to its intended purpose.
5.	To Future Inspectors:
6.	Reviewed By: Signature file (Court - Signature / Signature
	Title: Chief, Division of Grants-in-Aid
O .	Photographs are are not included.
Cor	nerel : Director, BOR State 810



STATE REGIONAL PLANNING CON

100 CHURCH STREET, NEW YORK, N. Y. 10007 TELEPHONE (212) 433-4200

August 4, 1971

Mr. Peter Q. Eschweiler, Commissioner Westchester County Department of Planning 910 County Office Building White Plains, New York 10601

PERS - Sewerage Facilities & Waste Treatment [NY-262] Hamlet of Chappaque, Westchester Co., N.Y. TOWN OF NEW CASTLE

Dear Mr. Eschwe ler:

In keeping with the Commission's Resolution No. 125, and as outlined in our letter of February 26th making March 15, 1971 the effective date for delegating the authority to the Counties and Regional Planning Agencies to act for the Tri-State Regional Planning Commission on federal aid project notifications of nonregional significance, it has been determined that the above captioned project falls into this category.

It will be appreciated if you will proceed with the appropriate review, obtaining reviews from interested localities, and then sending a letter to the applicant in the name of Tri-State with a copy to this office.

Thank you for your cooperation.

Sincerely,

Pobert P. Storseth, Director Management and Finance

RPS/jr enc.

cc:

T. McDonald

J. keed Jr.

R. DeTurk

R. Richmond

D	AIE	
	R: PLY	
	1.46	
•	TA. 60	1 -17 0
٠	TALA	, · · · · ·
	IM. ATT	1 40-1 0
٠.	IN LICER	1 .47
	BLU. msp	MATER
	T-X A>S'R	Pour
	A: L. TAE	1

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

NO. 74-1793

RACHEL EVANS, et al.,

Appellants,

JAMES T. LYNN, et al.,

Appellees.

CERTIFICATE OF SERVICE

This is to certify that two (2) copies of Appellants' Brief and one (1) copy of the Joint Appendix were served on counsel for each of the Appellees on the 16th day of July, 1974, as follows:

By Hand Delivery to:

V. Pamela Davis, Assistant United States Attorney
United States Courthouse
Foley Square
New York, N.Y.

Fy Head Pelivery
By First Class Mail, Postage Prepaid to:

Arthur M. Handler, Esq. Golenbock and Barell 60 East 42nd Street New York, N.Y. 10017 By First Class Mail, Postage Prepaid to:

Jeremiah J. Spires, Esq. Wikler Gottlieb Taylor & Howard 40 Wall Street New York, N.Y. 10005

RICHARD F. BELLMAN
Counsel for Appellants

Dated: July 16, 1974

